

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4497

Appeal PA23-00011

Ministry of the Solicitor General

March 7, 2024

Summary: The appellant 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 records about complaints made against him regarding his care of two horses. The ministry denied access to the responsive records in part, relying on the discretionary personal privacy exemption in section 49(b).

In this order, the adjudicator upholds the ministry's decision to deny access to the records.

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(1)(b), 21(2)(a), (d), (f), 21(3)(b), and 49(b).

Orders Considered: Order PO-2503.

OVERVIEW:

[1] The requester sought access to records about complaints made regarding his care of two horses. Specifically, he made a request to the Ministry of the Solicitor General (the ministry) under the *Freedom of Information and Protection of Privacy Act* (*FIPPA* or the *Act*) for the following:

Animal welfare complaints made against requester regarding care and nutrition of 2 horses. The last complaint made on July 27, 2022.

[2] The ministry granted partial access to responsive records relating to the July 27, 2022 complaint.¹ Access to the withheld information was denied pursuant to the discretionary personal privacy exemption at section 49(b) of the *Act*.

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

[4] The parties were unable to resolve the issues of the appeal through mediation. The appeal moved to the adjudication stage of the appeal process, where an adjudicator may conduct an inquiry. I decided to conduct an inquiry and I sought and received representations from the ministry and the appellant.

[5] I also notified two individuals who might have an interest in the disclosure of the records of the appeal.² Neither of those individuals provided representations.

[6] In this order, I uphold the ministry's decision that the information at issue in the records, the name and address of the complainant, is exempt by reason of the personal privacy exemption at section 49(b) and I dismiss the appeal.

RECORDS:

[7] The records in this appeal consist of a one-page occurrence report and a one-page note. The information that remains at issue is the name and address of the complainant.

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?

DISCUSSION:

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

[8] 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

¹ The ministry advised that it did not have records about a previous complaint.

² One of the individuals who was notified of the appeal was the individual who made the complaint on July 27, 2022 (the complainant).

the personal information relates.

[9] Section 2(1) of the *Act* gives a list of examples of personal information. The relevant parts of it read:

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

(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,

(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.

[10] 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.”³

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

Representations

[12] The ministry states that the records contain the personal information of two individuals other than the appellant collected by an animal welfare inspector, who was investigating a public complaint of alleged animal cruelty, involving two horses. The ministry claims that the personal information of these two individuals includes their names, telephone numbers, addresses, and information provided by them to the inspector.

[13] The appellant agrees that the records would contain the personal information of the complainant.⁶

³ Order 11.

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

⁵ See sections 21(1) and 49(b).

⁶ He did not address whether the records contain the other individual’s personal information.

Findings

[14] I agree that the records, which consist of a one-page occurrence report and a one-page note, contain the personal information of individuals other than the appellant, being the complainant and one other individual, including their names, personal telephone numbers and addresses, and their views or opinions in accordance with paragraphs (d), (e), and (h) of the definition of personal information in section 2(1).

[15] The records also contain the personal information of the appellant, including his name where it appears with other personal information about him in accordance with paragraph (h) of the definition of personal information in section 2(1).

[16] As the records contain the personal information of the appellant and other individuals, I will consider whether the discretionary personal privacy exemption at section 49(b) applies to the personal information that has not been disclosed.

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

[17] 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.

[18] 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.

[19] 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.

[20] 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).

[21] Sections 21(1) to (4) provide guidance in deciding whether disclosure would be an unjustified invasion of the other individual's personal privacy.

[22] If any of the exceptions in sections 21(1)(a) to (e) apply, or if any of the paragraphs in section 21(4)(a) to (d) apply, disclosure would not be an unjustified invasion of personal privacy and the information is not exempt from disclosure under section 49(b).⁷

[23] Otherwise, in deciding whether the disclosure of the personal information in the

⁷ None of the situations listed in section 21(4) are present in this appeal.

records would be an unjustified invasion of personal privacy under section 49(b), the decision-maker⁸ must consider and weigh the factors and presumptions in sections 21(2) and (3) and balance the interests of the parties.⁹

Representations

[24] In support of its position that section 49(b) applies, the ministry relies on the presumption against disclosure in section 21(3)(b), which reads:

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

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

[25] The ministry submits that the records were created pursuant to a law enforcement investigation conducted by an animal welfare services (AWS) inspector and specifically document the AWS inspector investigating a complaint related to the alleged abuse of two horses. It submits that if the AWS inspector had found that an offence had occurred (which they did not), charges could have been laid under the *Provincial Animal Welfare Services Act, 2019* (the *PAWS Act*). As well, it states that charges related to animal cruelty could be laid pursuant the *Criminal Code of Canada*.

[26] Based on the contents of the records, the ministry submits that personal information was clearly compiled by the AWS inspector and is identifiable as part the inspector's investigation of potential violations of the law.

[27] The ministry also claims that the factor which tends to support non-disclosure of personal information in section 21(2)(f) applies. This section reads:

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,

(f) the personal information is highly sensitive.

[28] The ministry relies on Order P-1618, where the IPC 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).

[29] The ministry further states that the inspector was investigating a public complaint impliedly submitted in confidence involving alleged animal abuse and that the other

⁸ The institution or, on appeal, the IPC.

⁹ Order MO-2954.

individuals in the records have a reasonable expectation that their personal information provided to the inspector would only be shared for a related law enforcement purpose, and not to be disclosed in the manner contemplated by this appeal.

[30] The appellant states that he is seeking access to the name and address of the complainant. He states that this is the second time in less than three years that someone has made an unsubstantiated complaint about his horses. He submits that for any person to be able to make such a complaint about the care and health of his horses, they would need to trespass onto his property. He states that this causes great concern for him and his family's safety.

[31] The appellant relies on the exception in section 21(1)(b) to support his position that the name and address of the complainant should be disclosed. That section reads:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

(b) in compelling circumstances affecting the health or safety of an individual, if upon disclosure notification thereof is mailed to the last known address of the individual to whom the information relates.

[32] The appellant submits that the complaint to protect animal safety resulted in an unjustified violation of his own and his family's personal safety and freedom, as an intruder had to trespass onto his land, which raises concerns for his family's safety.

[33] Regarding section 21(3)(b), the appellant states that he has not initiated any proceedings regarding a possible violation of law for trespass and invasion of private property as he requires the requested information.

[34] The appellant also relies on the factors weighing in favour of disclosure in section 21(2)(a) and (d), which 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.

...

(d) the personal information is relevant to a fair determination of rights affecting the person who made the request.

[35] Regarding the relevance of the factor at section 21(2)(a), the appellant states that in addition to the investigation of these false complaints being distressful and costly to

him and his family, they are of significant cost to the ministry. He submits that not only does the ministry take the time to record this false and unfounded complaint, but they also need to schedule a time for a visit and meet with him and assess the animals.

[36] Regarding the relevance of the factor at section 21(2)(d), the appellant submits that he does not see anywhere in the *PAWS Act* or *FIPPA* that indicates a person who makes a false complaint is either notified of the result of the investigation or that their complaint was unfounded. He also submits that neither the *PAWS Act* nor *FIPPA* indicate whether a complainant that makes repeated unfounded complaints is subject to a penalty. He states that if the complainant's identity was disclosed, a legal document could be served upon them to ensure that this person refrains from trespassing onto his private property.

[37] The appellant further submits that other considerations that are relevant here. Specifically, inherent fairness and ensuring public confidence in the ministry. He states: "We need to hold the institution accountable but we also need to hold the complainant accountable, and the only way for me to do this is to know who they are."

Findings

[38] For the reasons set out below, I find that the discretionary personal privacy exemption at section 49(b) applies to the information that remains at issue, the name and address of the complainant.

Section 21(1)(b) – compelling circumstances affecting the health or safety of an individual

[39] As set out above, if the section 21(1)(a) to (e) exceptions exist, the institution must disclose the information. In this case, the appellant relies on the exception in section 21(1)(b) which requires compelling circumstances affecting the health or safety of an individual.

[40] The purpose of section 21(1)(b) is to permit disclosure of potentially significant information affecting the health or safety of an individual.¹⁰ The appellant surmises that the complainant must have trespassed on his private property to view his horses' condition. He is concerned about his safety and that of his family because of this trespass that happened in 2022. He has not indicated that any harm was caused or threatened to be caused as a result of the complainant viewing the condition of his horses.

[41] Previous IPC orders have held that in order to meet the "compelling" circumstances threshold, the purpose of seeking the personal information at issue must be a matter of "immediate and essential health or safety".¹¹

[42] Based on my review of the records, I am not satisfied that the appellant has

¹⁰ Order PO-2541.

¹¹ Orders MO-3247, MO-2677, MO-4067-I, and PO-2541.

established that the complainant either trespassed on the appellant's property to view the horses, which were out in the open, or even if they did, that the complainant poses a threat to the health or safety of an individual as contemplated by section 21(1)(b).

[43] Furthermore, given that the records concern an animal welfare complaint from July 2022 that was deemed to be unfounded by the AWS inspector in September 2022, I am not satisfied that disclosure of the name and address of the complainant is a matter of immediate and essential health or safety. Therefore, I find that the "compelling" threshold has not been met and the section 21(1)(b) exception does not apply to the personal information at issue in this appeal.

Section 21(3)(b) – investigation into a possible violation of law

[44] As none of the exceptions in section 21(1) apply, I will now consider the presumption against disclosure in section 21(3)(b) raised by the ministry. This presumption requires only that there be an investigation into a possible violation of law.¹² So, even if criminal proceedings were never started against the individual, section 21(3)(b) may still apply.¹³

[45] The presumption can apply to different types of investigations, including those relating to by-law enforcement,¹⁴ and enforcement of environmental laws,¹⁵ occupational health and safety laws,¹⁶ or the Ontario *Human Rights Code*.¹⁷

[46] The presumption does not apply if the records were created after the completion of an investigation into a possible violation of law.¹⁸

[47] I find that the presumption in section 21(3)(b) applies as the AWS inspector was investigating a possible violation of law related to animal cruelty where charges could have been laid against the appellant under both the *PAWS Act* and the *Criminal Code of Canada*.

[48] The appellant appears to be relying on the second part of the exception in section 21(3)(b) that allows disclosure when necessary to prosecute the violation or to continue the investigation into a possible violation of law. He submits that he wants the name of the complainant in order that he may prosecute the complainant for trespass onto private property which he claims put him and his family in danger.

[49] I do not accept the appellant's argument that the second part of section 21(3)(b)

¹² Orders P-242 and MO-2235.

¹³ 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).

¹⁴ Order MO-2147.

¹⁵ Order PO-1706.

¹⁶ Order PO-2716.

¹⁷ Orders PO-2201, PO-2419, PO-2480, PO-2572 and PO-2638.

¹⁸ Orders M-734, M-841, M-1086, PO-1819 and MO-2019.

applies because he seeks this information to personally commence proceedings against the complainant. In Order PO-2503, the appellant in that appeal sought disclosure of a police report in order to allow him to pursue a possible legal action. In that order, the adjudicator stated:

I do not accept the appellant's submission that the information should be disclosed as it is necessary for him to pursue a legal action against the identifiable individual listed in the record, and that this constitutes a continuation of the investigation within the meaning of section 21(3)(b). Prior orders have provided that an appellant's own "investigation" does not constitute the continuation of the "investigation into a possible violation of law" referred to in section 21(3)(b). In Order PO-2167, Adjudicator Bernard Morrow stated:

I acknowledge the appellant's concerns that he requires this information in order to complete his own investigation. However, in my view, the drafters of the *Act* did not intend to justify the rebutting of the presumption against disclosure under section 14(3)(b) [of *MFIPPA*,¹⁹ the municipal equivalent to section 21(3)(b)] in circumstances where a private individual or organization wished to pursue their own investigation. The phrase "continue the investigation" refers to the investigation in which the information at issue was compiled. This view has been followed in previous orders of this office (Orders MO-1356, M-718 and M-249).

[50] I agree with these findings and adopt them in the current appeal. I find that the appellant's desire to privately prosecute the complainant does not constitute the prosecution of a violation or a continuation of the investigation within the meaning of section 21(3)(b).

[51] However, I have found that the personal information was compiled and is identifiable as part of an investigation into a possible violation of law. Therefore, I find that the presumption against disclosure in section 21(3)(b) applies as the personal information was compiled and is identifiable as part of an investigation into a possible violation of law.

Section 21(2) – factors in support of disclosure or non-disclosure

[52] 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.²⁰ Some of the factors weigh in favour of disclosure, while others weigh against disclosure.

[53] The list of factors under section 21(2) is not a complete list. The institution must

¹⁹ *Municipal Freedom of Information and Protection of Privacy Act*.

²⁰ Order P-239.

also consider any other circumstances that are relevant, even if these circumstances are not listed under section 21(2).²¹

[54] The ministry relies on the factor in section 21(2)(f) (highly sensitive), which tends to support non-disclosure of the personal information at issue, whereas the appellant relies on the factors in sections 21(2)(a) (public scrutiny) and 21(2)(d) (fair determination of rights) as well as the unlisted factors concerning inherent fairness ensuring public confidence in an institution, all of which tend to support the disclosure of the personal information.

[55] The factor in 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.²² It promotes transparency of government actions.

[56] 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.²³

[57] I find that in this case, the factor in section 21(2)(a) does not apply to support disclosure of the complainant’s personal information. As a result of his access request, the appellant received partial disclosure of the responsive records. This disclosure reveals the details of the complaint and the inspector’s findings about the complaint, namely that it was unfounded. The inspector was responding to a complaint about animal abuse. There is no allegation that the inspector performed his duties in an improper manner or that he did not have reasonable cause to perform the investigation.

[58] Although I acknowledge that the appellant has expressed concern that it costs the ministry to investigate unfounded complaints, I accept that it is part of the ministry’s mandate under the *PAWS Act* to investigate such complaints. I find that disclosure of the complainant’s name and address is not desirable for the purpose of subjecting the activities of the ministry to public scrutiny.

[59] The factor in section 21(2)(d) weighs in favour of allowing requesters to obtain someone else’s personal information where the information is needed to allow them to participate in a court or tribunal process. The IPC uses a four-part test to decide whether this factor applies. For the factor to apply, all four parts of the test must be met:

1. Is the right in question a right existing in the law, as opposed to a non-legal right based solely on moral or ethical grounds?

²¹ Order P-99.

²² Order P-1134.

²³ Order P-256.

2. Is the right related to a legal proceeding that is ongoing or might be brought, as opposed to one that has already been completed?
3. Is the personal information significant to the determination of the right in question?
4. Is the personal information required in order to prepare for the proceeding or to ensure an impartial hearing?²⁴

[60] The appellant submits that he wants the complainant's name and address in order to initiate trespass proceedings against them.

[61] Though I agree with the appellant that he may require the complainant's name and address to initiate civil proceedings, it is not clear to me that the complainant would have had to trespass in order to see the horses' condition. The appellant has not provided sufficient evidence to establish his right, existing in the law, to initiate a civil trespass claim in the circumstances set out in the records. Therefore, I find that the section 21(2)(d) factor only weighs somewhat in favour of disclosure.

[62] 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.²⁵ For example, personal information about witnesses, complainants or suspects in a police investigation may be considered highly sensitive.²⁶

[63] I agree with the ministry that disclosure of a complainant's name and address in a law enforcement investigation has been found to be highly sensitive information in prior IPC orders, which weighs against disclosure. However, in this appeal, although the complainant was asked to provide representations on whether their information should or should not be disclosed to the appellant, they did not do so. As a result, I find that the factor in section 21(2)(f) only weighs somewhat in favour of privacy protection.

[64] An institution must take into account considerations besides the ones listed in sections 21(2)(a) to (i) if they are relevant. In this case, the appellant raised the possible considerations of inherent fairness,²⁷ and ensuring public confidence in an institution.²⁸ The appellant did not address these unlisted factors directly in his representations, stating only that he needs to hold the institution and the complainant accountable, and the only way to do this is for him to know who the complainant is.

[65] I find that the appellant's evidence on sections 21(2)(a) and 21(2)(d) already

²⁴ See Order PO-1764; see also Order P-312, upheld on judicial review in *Ontario (Minister of Government Services) v. Ontario (Information and Privacy Commissioner)* (February 11, 1994), Toronto Doc. 839329 (Ont. Div. Ct.).

²⁵ Orders PO-2518, PO-2617, MO-2262 and MO-2344.

²⁶ Order MO-2980, PO-3712, and PO-4472.

²⁷ Orders M-82, PO-1731, PO-1750, PO-1767 and P-1014.

²⁸ Orders M-129, P-237, P-1014 and PO-2657.

addresses these issues related to the accountability of the ministry and the complainant. I have considered these factors above.

[66] Specifically, I have found that the manner in which the complaint was investigated by the ministry, including its partial disclosure of the records, does not warrant further public scrutiny by applying the factor favouring disclosure in section 21(2)(a).

[67] I also found that the appellant has not provided sufficient evidence for me to find that he has a right existing in law to sue the complainant and therefore, section 21(2)(d) weighs only somewhat in favour of disclosure.

Summary conclusion

[68] As noted above, in deciding whether the disclosure of the personal information in the records 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.

[69] In this appeal, I have found that the factors in sections 21(2)(d) and (f) weigh somewhat in favour or against disclosure respectively. I also found that the presumption at section 21(3)(b) weighing against disclosure applies, and that no factors favouring disclosure fully apply. Therefore, on balance, I find that the information at issue, the name and address of the complainant, is exempt under the disclosure exemption at section 49(b), as disclosure would be an unjustified invasion of the complainant's personal privacy.

[70] Section 49(b) is a discretionary exemption. The ministry must exercise its discretion to disclose. In making my finding that disclosure of the complainant's name and address would be an unjustified invasion of their personal privacy, I have considered whether the ministry's exercise of discretion in deciding not to disclose this personal information was reasonable. The ministry submits that in exercising its discretion it considered the following:

The public's expectation that their personal information will be protected when it forms part of a complaint that leads to a law enforcement investigation...; and,

The concern that disclosure of the records may subject affected third party individuals to an unjustified invasion of their personal privacy.

[71] Based on my review of the records and the ministry's representations, I find that it exercised its discretion based on relevant considerations and not based on irrelevant consideration.

[72] I have also considered the appellant's position that the ministry should have considered that he has a sympathetic and compelling need to receive the information at

issue because by holding false accusers accountable for their action it will increase public confidence in the operation of the ministry.

[73] First, based on my review of the disclosed portions of the records, which includes the timing of when the complaint was made and when it was investigated, as well as the information provided by the appellant to the ministry, I am not persuaded that the complaint was false when it was made to the ministry.

[74] Second, I do not agree with the appellant that he has a sympathetic or compelling need to receive the information at issue, namely the complainant's name and address in order to hold them accountable for a false complaint. Therefore, I find that the consideration raised by the appellant related to the complaint being false is not a relevant consideration for the ministry to consider.

[75] I find that the ministry exercised its discretion in a proper manner in deciding to withhold the information at issue in the record, the complainant's name and address, from the appellant. Accordingly, I will uphold the ministry's decision that complainant's name and address is exempt under section 49(b), and I dismiss the appeal.

ORDER:

I uphold the ministry's decision and dismiss the appeal.

Original signed by: _____
Diane Smith
Adjudicator

_____ March 7, 2024