

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4615

Appeal PA19-00059

Ministry of the Solicitor General

March 4, 2025

Summary: The ministry received multiple requests for records related to the death of the appellants' son. This appeal deals with records about a related breach of trust investigation into a police officer who investigated the death. The ministry initially withheld the majority of the records under the law enforcement exemptions related to an ongoing investigation (sections 14(1)(a), (b), and (f)).

During the inquiry, an individual was charged with the death of the appellants' son, and the ministry instead claimed the prosecution exclusion for some of the records (section 65(5.2)). The ministry also claimed the exemption at section 49(a), read with section 19 (solicitor-client privilege), and section 49(b) (personal privacy) for portions of other records. In this order, the adjudicator finds that the records are excluded from the *Act* due to the ongoing prosecution exclusion or otherwise exempt from disclosure under the sections claimed by the ministry. However, he finds that a portion of background information should be disclosed for compassionate reasons, and orders this information to be disclosed.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, sections 19, 23, 49(b), and 65(5.2).

Orders Considered: Orders PO-4287, PO-4368, MO-3122, PO-3983-I, P-1618, and MO-3753.

Cases Considered: *Ontario (Attorney General) v. Toronto Star*, 2010 ONSC 991.

OVERVIEW:

[1] The Ministry of the Solicitor General (the ministry) received multiple requests under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for records relating to the Ontario Provincial Police's (OPP) investigation of the death of the requesters' son.

[2] One request and subsequent appeal related to OPP reports, officer notes, and other correspondence between the requesters and two named officers. This request was addressed in Order PO-4287, where the adjudicator found that the records at issue related to an ongoing prosecution and were therefore excluded from the *Act* under section 65(5.2). A second request and appeal related to OPP records for an investigation into officer conduct. This request was addressed in Order PO-4368, where the adjudicator found that the records were not excluded from the *Act* under the section 65(6)3 employment or labour relations exclusion, and the ministry was ordered to issue an access decision.

[3] The present appeal relates to a request for OPP reports, officers' notes, witness statements, and audio and video recordings related to a breach of trust investigation into the conduct of a municipal police officer, specifically a breach of confidentiality where the officer was alleged to have provided information about the child's death investigation to a civilian. The ministry initially issued an access decision, denying access to the responsive records in part, claiming the application of sections 49(a) (discretion to refuse requester's own information) read with sections 14(1)(a) (law enforcement matter), 14(1)(b) (law enforcement investigation), 14(1)(f) (right to a fair trial), 14(1)(l) (facilitate commission of an unlawful act), section 19 (solicitor-client privilege), and section 49(b) (personal privacy). The ministry also claimed that some of the information was non-responsive to the request.

[4] The requesters (now the appellants) appealed the decision to the Information and Privacy Commissioner of Ontario (IPC). During mediation, the appellants stated that they were not seeking access to non-responsive portions of the records. They also stated that they were not seeking access to any police codes in the records [which were withheld under section 14(1)(l)], as well as the names of witnesses, names of police officers, any dates of birth, or any home addresses.

[5] No further mediation was possible, and the appeal was moved to the adjudication stage of the appeals process. An IPC adjudicator conducted an inquiry where she sought and received representations from the ministry and the appellants. During the inquiry, the ministry stated that the matter that was being investigated had been referred for prosecution. As a result, the ministry was no longer claiming sections 14(1)(a), (b), or (f), but raised the section 65(5.2) exclusion for some of the records that it states relate to the prosecution. It also continued to claim the remainder of exemptions.

[6] The file was then assigned to me to complete the inquiry. I reviewed the materials in the file and sought confirmation from the ministry that the prosecution it referenced

was still ongoing. The ministry confirmed that it was, and I determined that I did not need to seek further representations from the parties.

[7] For the reasons that follow, I partially uphold the ministry's decision. I find that the bulk of the records are either excluded from the scope of the *Act* under section 65(5.2) or exempt from disclosure under the ministry's claimed exemptions. However, there is a portion of background information that I order disclosed for compassionate reasons.

RECORDS:

[8] There are 56 pages of records at issue, consisting of: an occurrence summary, officers' notes, witnesses' synopses, and an officer's report. Also at issue are: video and audio recordings of a police witness interview, an audio-only recording of another witness interview, and portions of an audio-only recording of a police interview with the appellants.¹

ISSUES:

- A. Does the section 65(5.2) exclusion for records relating to a prosecution apply to the records?
- B. Does the discretionary exemption at section 49(a), allowing an institution to refuse access to a requester's own personal information, when read with the solicitor-client privilege exemption at section 19, apply to the information at issue?
- C. Does the discretionary personal privacy exemption at section 49(b) apply to the records?
- D. Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the section 49(b) exemption?
- E. Did the ministry properly exercise its discretion under sections 49(a) and 49(b)?

DISCUSSION:

Issue A: Does the section 65(5.2) exclusion for records relating to a prosecution apply to the records?

[9] The ministry has claimed that the recording of the police interview with the appellants and portions of the recordings with the two witnesses are excluded from the

¹ The ministry also claimed that three pages of officer's notes were excluded under section 65(5.2) of the *Act*, but they were provided to the appellant prior to the inquiry and are accordingly not at issue in this appeal.

Act under section 65(5.2). Section 65(5.2) of the *Act* excludes records relating to an ongoing prosecution from the *Act*. As a result, if the section 65(5.2) exclusion applies, the records are not subject to the *Act*'s access scheme.

[10] The purposes of section 65(5.2) include maintaining the integrity of the criminal justice system, ensuring that the accused and the Crown's right to a fair trial is not infringed, protecting solicitor-client privilege and litigation privilege, and controlling the sharing and publication of records relating to an ongoing prosecution.²

[11] Section 65(5.2) states:

This Act does not apply to a record relating to a prosecution if all proceedings in respect of the prosecution have not been completed.

[12] The term "prosecution" in section 65(5.2) means proceedings in respect of a criminal or quasi-criminal charge brought under an Act of Ontario or Canada. Here, the ministry claims that some of the records relate to a criminal prosecution. While the appellants dispute that the records are excluded, they do not dispute that the prosecution at issue is within the ambit of section 65(5.2), and I agree that it is.

[13] For the exclusion to apply, there must also be "some connection" between the records and the case to be made by the prosecuting authority.³ The phrase "in respect of" requires some connection between "a proceeding" and "a prosecution."⁴ Whether a prosecution has been "completed" depends on the facts of each specific case.⁵

Representations

[14] As discussed above, the ministry initially claimed multiple section 14(1) law enforcement exemptions for portions of the records. These claims were withdrawn during the inquiry after an individual was charged with the death of the appellants' son. The ministry then claimed that the recording of the police interview with the appellants and portions of the recordings with the two witnesses were excluded from the *Act* under section 65(5.2), due to the ongoing prosecution of the individual.

Ministry representations

[15] The ministry acknowledges that the specific breach of trust investigation underlying this appeal was not referred for prosecution. However, it submits that some of the records relate to the prosecution of the individual charged with the death of the

² *Ontario (Attorney General) v. Toronto Star*, 2010 ONSC 991.

³ *Ontario (Attorney General) v. Toronto Star*, cited above; see also *Canada (Information Commissioner) v. Canada (Commissioner, RCMP)*, 2003 SCC 8, [2003] 1 S.C.R. 66 at para. 25, and Order MO-3919-I.

⁴ *Ministry of the Attorney General and Toronto Star and Information and Privacy Commissioner*, cited above; see also *Canada (Information Commissioner) v. Canada (Commissioner, RCMP)*, 2003 SCC 8, [2003] 1 S.C.R. 66 at para. 25.

⁵ Order PO-2703.

appellants' son, and one of these records, an interview with the appellants, was disclosed to the Crown Attorney at its request.

[16] For other records, consisting of portions of police interviews with two witnesses, the ministry states that they contain information about the appellants' son's death, bringing them within the scope of section 65(5.2). Citing *Ontario (Attorney General) v. Toronto Star (Toronto Star)*,⁶ it states that although the records are not currently part of the Crown brief, they may be in the future, and therefore the fact that the records have not yet been provided to the Crown Attorney's office is not determinative of whether they are excluded.

Appellants' representations

[17] The appellants submit that the three pages of officer's notes, which they received despite the ministry's exclusion claim, show that the ministry is improperly claiming section 65(5.2). They state that the officer in question did not participate in the police investigation into their son's death, and the notes were not collected for the purpose of the prosecution. They also state that the ministry has provided no evidence that the officer's notes would be in any way probative in the prosecution.

[18] The appellants further submit that the records they are seeking relate to the breach of trust investigation and have nothing to do with the prosecution related to their son's death. They dispute the ministry's assertion that the records are excluded just because they contain information about a death that is now the subject of a prosecution, referencing Order MO-3122 as support. They also submit that some of the records at issue contain their own information and should be disclosed to avoid an absurd result. They further state that the information should be disclosed for compassionate reasons.

Analysis and finding

[19] The ministry submits that one of the records, a recording of an interview with the appellants for which the ministry has claimed the exclusion, was specifically sought by the Crown for the prosecution. The appellants did not dispute this, and I accept the ministry's claim. Based on this, I find that it is excluded from the scope of the *Act* under section 65(5.2).

[20] For the other records, the ministry does not claim that they were provided to the Crown, but states that they contain information related to the prosecution, and the exclusion is only being claimed for this information. The ministry did not specify what portions of the interviews contain this information.

[21] The appellants refer to Order MO-3122, where the adjudicator found that records breaking down overtime and other associated costs for a police standoff (that resulted in criminal charges) were not "prosecution materials" contemplated by the court in *Toronto*

⁶ 2010 ONSC 991.

Star, nor did they fall within the ambit of the municipal equivalent of 65(5.2) as “records relating to a prosecution.” I agree that the section 65(5.2) exclusion is not so broad as to encompass any record tangentially related to a prosecution, and there must be “some connection” between the records at issue and the prosecution in question.

[22] However, I find that, in the present appeal, such a connection has been established. Although the police interviews were conducted for a breach of trust investigation, the statements provided to the police about the death of the appellants’ son, on their face, arguably have some probative value in the context of the prosecution. Additionally, as the Court explained in *Toronto Star*, the section 65(5.2) exclusion is not limited to records that form part of the Crown Brief or prosecution materials.⁷ Documents that are not yet part of the Crown Brief may become part of the Crown Brief at a later time. The ministry’s arguments focused on the video and audio recordings of the interviews; however, I make the same finding for the synopses of these interviews as they are another form of the same information.

[23] The “some connection” threshold requires only that there be a connection between the records and the prosecution. Here, I find that this threshold has been met, and the records are therefore excluded from the scope of the *Act*. Although the ministry has not claimed that the interviews necessarily will be determinative of the outcome of the prosecution, the interviews are, on their face, records about a police investigation that is related to a crime that is currently being prosecuted.

[24] I note that the ministry has only claimed the exclusion for portions of two of the interviews. However, the IPC has historically taken a “whole record” approach to exclusion claims under the *Act*.⁸ In PO-3893-I, for example, the whole record approach was applied even when the institution only claimed an exclusion for parts of the records. I adopt and apply this reasoning to the present appeal. While there are portions of the interviews that are only about the breach of trust investigation and do not directly relate to the prosecution at issue, taking a whole record approach, I find that the two interviews, along with the written synopses, are excluded from the *Act* under section 65(5.2).

[25] The court in *Toronto Star* affirmed that section 65(5.2) is a time-limited exclusion, expiring once the appeal period for an ongoing prosecution has lapsed. Accordingly, the IPC only acquires jurisdiction once all proceedings in respect of the prosecution have been completed, at which point the appellant may make a new request.

[26] The appellants have also claimed that the interview the police conducted with them should not be excluded from the *Act*, as this would lead to an absurd result. However, the absurd result principle does not arise in the context of my consideration of the section 65(5.2) exclusion.⁹ Because these specific records are not at all accessible under the *Act*

⁷ *Toronto Star* at para. 56.

⁸ See, for example, Orders PO-3943 and PO-3642.

⁹ The section 23 public interest override, discussed later, also cannot apply to records excluded under section 65(5.2).

at this time, I do not need to address this argument further in relation to the recordings or related interview synopses.

Issue B: Does the discretionary exemption at section 49(a), allowing an institution to refuse access to a requester's own personal information, when read with the solicitor-client exemption at section 19, apply to the records?

The records contain the personal information of the appellant and other parties

[27] The ministry has claimed that solicitor-client privilege applies to exempt some of the information on pages 2 and 41 of the records under section 49(a) of the *Act*. Before I consider the exemptions claimed by the ministry, I must first determine whether the records contain "personal information" and if so, whether the personal information belongs to the appellant, other identifiable individuals, or both. "Personal information" is defined in section 2(1) of the *Act* as "recorded information about an identifiable individual."

[28] 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. 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.¹⁰ The definition of "personal information" in section 2(1) of the *Act* gives a list of examples of personal information.

[29] The parties do not dispute, and I find, that pages 2 and 41 of the records at issue contain the personal information of the appellants and other individuals, such as their names, contact information, and history of involvement with the police. As such, I will consider the application of section 49(a), read with section 19.

Section 49(a)

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

[31] Section 49(a) of the *Act* reads:

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

¹⁰ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

where section 12, 13, 14, 14.1, 14.2, 15, 15.1, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that personal information.

[32] The discretionary nature of section 49(a) ("may" refuse to disclose) recognizes the special nature of requests for one's own personal information and the desire of the Legislature to give institutions the power to grant requesters access to their own personal information.¹¹

[33] In this case, the ministry submits that it exercised its discretion to withhold a small portion of information on pages 2 and 41 of the records based on section 49(a), read with section 19. Section 19(a) exempts certain records from disclosure if they are subject to solicitor-client privilege. Solicitor-client communication privilege protects direct communications of a confidential nature between lawyer and client, or their agents or employees, made for the purpose of obtaining or giving legal advice.¹² The privilege covers not only the legal advice itself and the request for advice, but also communications between the lawyer and client aimed at keeping both informed so that advice can be sought and given.¹³

[34] Confidentiality is an essential component of solicitor-client communication privilege. The institution must demonstrate that the communication was made in confidence, either expressly or by implication.¹⁴

[35] Under the common law, a client may waive solicitor-client privilege. An express waiver of privilege happens where the client knows of the existence of the privilege and voluntarily demonstrates an intention to waive the privilege.¹⁵ There may also be an implied waiver of solicitor-client privilege where fairness requires it, and where some form of voluntary conduct by the client supports a finding of an implied or objective intention to waive it.¹⁶

Representations, analysis, and finding

[36] The ministry submits that the withheld information would reveal the contents of direct communications of a confidential nature between the OPP and the Crown Attorney's office. It states that there is no evidence to suggest that the privilege has been waived. The appellants did not provide specific representations on this section.

[37] The common law solicitor-client communication privilege aspect of section 19(a) protects direct communications of a confidential nature between lawyer and client, or their agents and employees, made for the purpose of obtaining or giving legal advice.

¹¹ Order M-352.

¹² *Descôteaux v. Mierzwinski* (1982), 141 D.L.R. (3d) 590 (S.C.C.).

¹³ *Balabel v. Air India*, [1988] 2 W.L.R. 1036 at 1046 (Eng. C.A.); *Canada (Ministry of Public Safety and Emergency Preparedness) v. Canada (Information Commissioner)*, 2013 FCA 104.

¹⁴ *General Accident Assurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321 (C.A.); Order MO-2936.

¹⁵ *S. & K. Processors Ltd. v. Campbell Avenue Herring Producers Ltd.* (1983), 45 B.C.L.R. 218 (S.C.).

¹⁶ *R. v. Youvarajah*, 2011 ONCA 654 (CanLII) and Order MO-2945-I.

Here, where the withheld information directly relates to consultations between the OPP and the Crown, I find that the information is protected by solicitor-client privilege. I accept the ministry's submission that there has been no waiver of this privilege, and I find that the information is exempt under section 49(a), read with section 19(a), subject to my review of the ministry's exercise of discretion in Issue E.

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

[38] As mentioned above, section 47(1) of the *Act* gives individuals a right of access to their own personal information held by an institution, subject to the exemptions under section 49.

[39] The ministry has claimed section 49(b) exempts most of the paper records in the file, with the exception of pages 3, 5, 9, 11, 25, 28, 29, 32, 34, 35, 37, and 40.¹⁷ Having reviewed these records, I find that they contain the personal information of the appellants and other individuals (including the appellants' deceased son) within the meaning of "personal information" described above. 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.

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

[41] If disclosing another individual's personal information would not be an unjustified invasion of their personal privacy, then the information is not exempt under section 49(b). Additionally, the requester's own personal information, standing alone, cannot be exempt under section 49(b) as its disclosure could not, by definition, be an unjustified invasion of another individual's personal privacy.¹⁸

[42] Sections 21(1) to (4) provide guidance in determining whether disclosure would be an unjustified invasion of personal privacy under section 49(b). Neither of the parties argued that any of the section 21(1) exceptions apply to the appeal, and I find that they do not. Section 21(2) provides a list of factors for the ministry to consider in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy. Section 21(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy, whereas section 21(4) lists types of information for which disclosure would not be an unjustified invasion of

¹⁷ Information on these pages was withheld as non-responsive because it relates to other unrelated police matters.

¹⁸ Order PO-2560.

privacy.

[43] In their representations, the ministry and the appellant have relied on or discussed the presumption in section 21(3)(b) and the factors in sections 21(2)(a), (b), and (f):

(3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where 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

(2) 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

(f) the personal information is highly sensitive

[44] The appellants have further claimed that the information at issue should be released for compassionate grounds, engaging section 21(4)(d) of the *Act*.

Representations

Ministry representations

[45] The ministry submits that the withheld portions of the records relate to an investigation into a possible violation of law: an allegation of breach of trust by a police officer. It states that breach of trust is an offence under the *Criminal Code*, and accordingly the section 21(3)(b) presumption against disclosure applies. It references Order PO-3766 as support.

[46] The ministry also claims that section 21(2)(f) applies, favouring non-disclosure. It states that disclosure of the personal information of affected parties would cause significant personal distress because the parties have not been notified, and it relates to a criminal investigation. It states that parties who provided information to the police would not expect it to be subject to disclosure in the manner contemplated by this appeal. It cites Order P-1618, where information about how complainants, witnesses, or suspects interacted with the OPP was found to be highly sensitive within the meaning of section 21(2)(f).

[47] With respect to whether the information should be released for compassionate reasons, the ministry states that section 21(4)(d) does not apply to the information at issue, as the withheld personal information does not belong to a close relative of the deceased individual (the appellants' son).

Appellant representations

[48] The appellants submit that they want the records released so that the information can be used to prevent the deaths of other children in the future, and to maintain public confidence in the public institutions that dealt with and investigated the death of their son. They state that they want a public airing of what went wrong in the events leading to the death and the investigations that occurred afterwards, and note that newspaper reporters are also interested in the information at issue. They state that, as the parents of the deceased child, it is their right to understand everything that happened to their son. They cite Orders P-256 and PO-2789 to show how the IPC has previously found that the section 21(2)(a) factor applies when the information at issue will subject the institution to public scrutiny.

[49] The appellants also state that some of the records specifically relate to their family, particularly interviews between the appellants themselves and the police. Citing Orders M-444 and M-451, they state that this information should be disclosed to them, since not releasing it would lead to an absurd result. They also state that the entirety of the information generally relates to them, and they should be given access to it, with exempt information severed if needed.

Analysis and finding

[50] In determining whether the disclosure of the withheld information in the records would be an unjustified invasion of personal privacy under section 49(b), I will begin by considering and weighing the factors and presumptions in sections 21(2) and (3) and balance the interests of the parties.¹⁹

21(3)(b): Investigation into a possible violation of law

[51] Under section 21(3)(b), the disclosure of an individual's personal information to another individual is presumed to be an unjustified invasion of personal privacy if the personal information:

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

[52] Even if no criminal proceedings were commenced against any individual, as is the case in this appeal, section 21(3)(b) may still apply. The presumption only requires that

¹⁹ Order MO-2954.

there be an investigation into a possible violation of the law.²⁰ Based on my review of the information at issue, it is, on its face, information that was compiled as part of a police investigation into an alleged breach of trust by a municipal police officer, conducted by the OPP. It is not disputed that police investigations qualify as “investigations into a possible violation of law,” and the presumption against disclosure in section 21(3)(b) therefore applies.

21(2)(a): Subjecting institutions to public scrutiny

[53] The appellants submit that disclosure of the information would help subject the OPP to public scrutiny, engaging section 21(2)(a) as a factor favouring disclosure. This section supports disclosure of personal information when it would subject the activities of the government (as opposed to the views or actions of private individuals) to public scrutiny.²¹ It promotes transparency of government actions. The issues raised by the information being sought do not have to have been the subject of public debate for section 21(2)(a) to apply, but the existence of public debate on such issues might support disclosure under this section.²²

[54] I agree with the appellants’ submission that the issues underlying the request – the death of their son and subsequent investigation – warrant public scrutiny. While protecting the lives of children and ensuring that investigations are conducted properly are important issues, I find that the specific personal information of other parties being withheld in this case, relates to information that is unrelated to the death investigation, such as their employment status. For this information, I find that it would not assist with subjecting the ministry or other government institutions to public scrutiny, and the factor does not apply.

[55] However, some of the other information, specifically the officers’ notes and other police reports, provide additional information on how the police conducted the breach of trust investigation. This information does not directly relate to the death of the appellants’ son, but does provide insight into how a related investigation was conducted. For this information, I find that the section 21(2)(a) factor favouring disclosure applies.

21(2)(b): Promoting public health and safety

[56] This section supports disclosure where disclosure of the information would promote public health and safety. While I understand the appellants’ desire to obtain all of the information at issue, they have not demonstrated how the release of the personal information of other parties would promote public health and safety, aside from the general claim made under section 21(2)(a) that scrutiny of the police and other institutions is important. Considering that any support this gives for disclosure has already

²⁰ Orders P-242 and MO-2235.

²¹ Order P-1134.

²² Order PO-2905.

been considered under section 21(2)(a), I give this factor no weight.

21(2)(f): Highly sensitive information

[57] This section 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.²³

[58] Citing Order P-1618, the ministry submits that the information at issue is highly sensitive because it relates to witnesses or suspects in a police investigation. I agree that information provided to the police in an investigation can generally be considered highly sensitive, and this factor therefore applies.²⁴ This is particularly true considering the nature of the records which relate to a very sensitive subject, in the context of a breach of trust investigation against a police officer. Disclosure of the withheld personal information, even if understandably desirable for the appellants, is likely to cause significant personal distress to the other parties. Based on this, I find that the factor at section 21(2)(f) applies, favouring non-disclosure.

Balancing the factors, absurd result, and severances

[59] I have considered and weighed the representations of the parties, the section 21(3)(b) presumption, the various factors weighing both for and against disclosure, the nature of the records at issue, as well as the underlying context. I have also considered the access and privacy rights of the appellants and the affected parties, respectively. Although I understand the appellants’ desire to obtain as much information as possible about the investigations surrounding their sons’ death and subjecting police actions to public scrutiny, I must also consider the relevant presumption and factors against disclosure. In particular, the personal information at issue was supplied as part of a law enforcement investigation into a very sensitive topic, and disclosure of most of the withheld information would be an unjustified invasion of the personal privacy of individuals other than the appellants under section 49(b). With the exception of a portion of background information, discussed below, I uphold the decision of the ministry, subject to my review of the public interest override and the ministry’s exercise of discretion, discussed in Issues D and E.

[60] I also note that the appellants sought any information that can be severed from the exempt portions of the records. Reviewing the records, I find that all information that can be reasonably severed from the exempt portions of the records has been provided to the appellants.

²³ Orders PO-2518, PO-2617, MO-2262 and MO-2344.

²⁴ See also, for example, Order MO-2980.

21(4)(d): Compassionate reasons

[61] The appellants argue that the information at issue should be disclosed for compassionate reasons. While it is clear that the nature of the request lends itself to the release of information for compassionate reasons, I find that the exception does not apply in this case.

[62] As summarized by the adjudicator in Order MO-3753, “[c]ompassionate reasons have generally been found to exist where information will assist a close relative in understanding the events leading up to and surrounding the death of an individual.” This may include information about related events that occurred prior to the individual’s death if that information would assist with the requester’s grieving process.²⁵

[63] As the ministry notes, section 21(4)(d) relates to the release of information about a deceased individual. The majority of the personal information in the records that is about the circumstances of the appellants’ son’s death has already been disclosed to the appellants, whereas the personal information that remains at issue is about other parties. Personal information about an individual who has died can be intertwined with information that also belongs to another individual. However, the overall circumstances must be considered when deciding whether the disclosure of information under section 21(4)(d) would interfere with that individual’s right to privacy.²⁶

[64] There is a portion of background information on page 51 of the records that specifically relates to the circumstances of their son’s death, and I find that this information should be disclosed because it is desirable for compassionate reasons.

[65] The remaining withheld information is either specifically about the affected parties, or is information that the affected parties provided to the police in the context of the breach of trust investigation. This information is not related to the circumstances of the child’s death and it therefore should not be disclosed under section 21(4)(d).

[66] The ministry also listed sections 14(1)(a), 14(1)(b), 14(1)(f), and 14(1)(l) as claimed exemptions for the entirety of page 51, without specifying which sections applied to each redacted portion. Sections 14(1)(a), 14(1)(b), and 14(1)(f) were withdrawn in the ministry’s supplemental decision letter, and I find that section 14(1)(l) is not applicable to the background information contained in the report. Therefore, with section 49(b) being the only applicable exemption, I will order this portion of the background information disclosed.

Issue D: Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the section 49(b) exemption?

[67] Having found that the records are exempt under section 49(b), I will now consider

²⁵ See Order MO-2245.

²⁶ Order MO-2237.

if there is a compelling public interest in their disclosure.²⁷ Section 23 of the *Act*, the “public interest override,” provides for the disclosure of records that would otherwise be exempt under another section of the *Act*.

[68] For section 23 to apply, two requirements must be met. First, there must be a compelling public interest in disclosure of the records, and second, this interest must clearly outweigh the purpose of the exemption – in this case, the personal privacy exemption at section 49(b).

[69] In previous orders, the IPC has stated that in order to find a compelling public interest in disclosure that outweighs the exemption, the information in the record must serve the purpose of informing or enlightening the citizenry 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 The IPC has defined the word “compelling” as “rousing strong interest or attention.”²⁹

Representations, analysis, and finding

[70] The ministry did not provide representations on the public interest override. The appellants did not provide specific representations, but generally submit that if the records are found to be exempt from disclosure under the ministry’s claimed exemptions, the section 23 public interest override should apply.

[71] I understand the appellants’ desire to obtain as much information as possible about the circumstances surrounding their child’s death. However, I do not agree that there is a compelling public interest in disclosure of the exempt personal information or that any public interest in its disclosure outweighs the purpose of the section 49(b) exemption.

[72] The information that I found to be exempt under section 49(b) is the personal information of individuals other than the appellants and pertains to the breach of trust investigation. While I am satisfied that there is a compelling public interest in disclosure of information about the circumstances of the child’s death and the conduct of the investigation into the death, I am not satisfied that there is a similar compelling public interest in disclosure of the personal information of those involved in the breach of trust investigation of the police officer. The withheld information would provide limited, if any, insight into the death investigation that does not outweigh the interests protected by section 49(b). I find that section 23 does not apply.

²⁷ The section 65(5.2) exclusion and the section 19 exempt cannot be overridden by section 23 of the *Act*.

²⁸ Orders P-984 and PO-2556.

²⁹ Order P-984.

Issue E: Did the ministry properly exercise its discretion under sections 49(a) and 49(b)?

[73] The section 49(a) and 49(b) exemptions are discretionary, 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.

[74] 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. In either case, the IPC may send the matter back to the institution for an exercise of discretion based on proper considerations.³⁰ The IPC cannot, however, substitute its own discretion for that of the institution.³¹

Representations, analysis, and finding

[75] The ministry submits that it exercised its discretion correctly in the context of this request and appeal. It states that it considered the strong public policy interest in protecting the social contract between the police and communities they serve, and to protect the privacy of the individuals whose highly sensitive personal information is contained in the records.

[76] The appellants submit that the ministry is trying to avoid scrutiny of its actions, including focusing on the wrong people as suspects in their son's death investigation, as well as more general concerns about how the investigation was handled by the police. They state that the ministry's decision to deny access to the information in the appeal was done for an improper purpose, namely to shield the police from scrutiny and embarrassment.

[77] I have reviewed the considerations relied upon by the ministry and I find that it properly exercised its discretion in response to the access request. Based on its representations, it considered the purposes of the *Act* and sought to balance the appellants' interest in accessing the records with the purposes of the section 49(a) and 49(b) exemptions.

[78] While I appreciate that the appellants are dissatisfied with how the ministry responded to their request, I find that the ministry did not exercise its discretion to withhold the information for any improper purpose or in bad faith, and that there is no evidence that it failed to take relevant factors into account or that it considered irrelevant factors. Accordingly, I uphold the ministry's exercise of discretion in denying access to the information that I have not ordered disclosed.

³⁰ Order MO-1573.

³¹ Section 54(2).

ORDER:

1. I order the ministry to disclose the background portion on page 51 of the records by **April 8, 2025**. I have provided the ministry with a copy of the page, highlighting this information in blue. To be clear, only the information that is highlighted in blue should be disclosed to the appellants.
2. I otherwise uphold the ministry's decision.
3. In order to verify compliance with Order provision 1, I reserve the right to require the ministry to provide me with a copy of the records disclosed to the appellants.

Original Signed by: _____

Chris Anzenberger
Adjudicator

_____ March 4, 2025