

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4446

Appeal PA21-00550

Ministry of the Solicitor General

October 10, 2023

Summary: This appeal is about access to records relating to the granting and renewal of a firearms licence to an individual with a conviction for a violent offence and who later used a legally-owned weapon to kill his former girlfriend and himself in a murder-suicide. The ministry denied access to responsive records on the basis of the law enforcement exemptions in sections 14(1)(c) (reveal investigative techniques and procedures), 14(1)(i) (endanger security of a system or procedure), and 14(1)(l) (facilitate commission of an unlawful act or hamper control of crime), and the mandatory personal privacy exemption in section 21(1). The appellant raised the application of the public interest override in section 23.

In this order, the adjudicator partially upholds the ministry's decision. The adjudicator finds that some of the records contain confidential law enforcement information that is exempt under sections 14(1)(c) and (i). She finds that disclosure of some of the remaining records, except where they contain the personal information of individuals other than the victim or the licensee, would not constitute an unjustified invasion of personal privacy under section 21(2)(a) because disclosure is desirable for subjecting the activities of government to public scrutiny. The adjudicator also finds that the public interest override in section 23 does not apply to the personal information she finds to be exempt under section 21(1). The adjudicator orders the ministry to disclose a severed version of the records to the appellant by removing information that is exempt under sections 14(1)(c) and (i), and some of the personal information belonging to the licensee and some individuals other than the licensee.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2(1) (definition of "personal information"), 14(1)(c), 14(1)(i), 14(1)(l), 21(1), 21(2)(a), 21(2)(f), and 23.

Orders Considered: Order PO-2582.

OVERVIEW:

[1] This appeal is about access to records relating to the granting and renewal of a firearms license to an individual (the licensee) who used a legally-owned firearm to kill his former girlfriend and himself in a murder-suicide.

[2] The licensee had a history of violence and a conviction for violent offences.¹ At the time of his application for a firearms Possession and Acquisition Licence (PAL or licence), he was on probation as a result of a conviction for forcible confinement and assault. He was charged with another offence before his PAL was renewed in 2009. In 2013, after following his former girlfriend to her temporary residence, he shot her twice with a licensed shotgun before shooting himself. Police found a second shotgun in his car.²

[3] The appellant made a request to the Ministry of the Solicitor General (the ministry) for access under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to records relating to the granting and renewal of the licence. According to the appellant's request:

- the licensee "was granted, and then retained, a firearms license despite a history of violent crime, psychological instability and threats of suicide," and that he killed the victim with one of his legally-owned firearms, for which he had a valid license at the time of his death; and,
- the issue of why the licensee was allowed to legally retain his firearms license despite a history of violent crime, psychological instability and threats of suicide, is a question affecting public safety that may shed light on wider systemic issues.

[4] The ministry located responsive records held by the Chief Firearms Office (CFO).³ The ministry issued a decision denying access to "all records from the [CFO] relating to the decision to grant, and then renew, a [PAL]" on the basis of the mandatory personal privacy exemption in section 21(1) and the discretionary law enforcement exemptions in sections 14(1)(c) (reveal investigative techniques), 14(1)(i) (endanger security of building, vehicle, system or procedure) and 14(1)(l) (facilitate commission of unlawful act or hamper the control of crime). The ministry also claimed that some responsive records were exempt under section 15 (relations with other governments), and wrote that the appellant had "not provided compelling arguments to support the release of the records

¹ According to the parties' representations and materials submitted by them during this appeal, including a report of the Domestic Violence Death Review Committee, Office of the Chief Coroner.

² According to the report of the Domestic Violence Death Review Committee, Office of the Chief Coroner.

³ According to the ministry, responsive records are held by the CFO, which reports to both the Ontario Provincial Police (OPP) and the ministry.

for the purpose of public health and safety."

[5] The appellant appealed the ministry's decision to the Office of the Information and Privacy Commissioner of Ontario (IPC). The parties participated in mediation, during which the application of the public interest override in section 23 of the *Act* was added as an issue.

[6] The appeal was not resolved in mediation and was transferred to the adjudication stage of the appeal process, where an adjudicator may conduct a written inquiry. I conducted an inquiry during which I received representations from the ministry, the appellant, and the victim's mother. Because the ministry submits that some of the records are on forms created and administered by the RCMP, I notified the RCMP of the appeal and invited them to comment. The RCMP did not submit representations. I also sought representations from the licensee's next-of-kin and the victim's mother. Of the affected parties I contacted, only the victim's mother submitted representations. I have considered her representations in determining whether her daughter's personal information in the records should be disclosed.

[7] In this order, I partially uphold the ministry's decision. I find that some of the information is exempt under the law enforcement exemptions in section 14(1)(c) and (i). I find that the remaining records contain the licensee's, victim's, and other identifiable individuals' personal information.

[8] Regarding the personal information in the records, after considering the factors in section 21(2), I find that:

- certain personal information relating to the licensee is not exempt under section 21(1), but that the remaining personal information is;
- the victim's personal information is not exempt under section 21(1);
- personal information belonging to other identifiable individuals is exempt.

[9] I further find that the public interest override does not apply to the personal information that I have found to be exempt.

[10] I order the ministry to disclose a severed version of the records, by removing information that is exempt under sections 14(1)(c) and (i), and by removing the personal information of individuals other than the licensee and the victim, and some of the licensee's personal information.

RECORDS:

[11] There are 47 pages of records at issue, consisting of the following:

Page numbers	Type of record
1 to 9	Records from the CPIC ⁴ database, including checklists used by the CFO to consider whether someone should hold a firearms licence
10 to 23	Client application records
24 to 26	License renewal application
27 to 28	Photograph, front and back
29 to 37	Replacement records, including application and worksheet
38 to 40	2004 licence application
41	Letter authored by licensee
42 to 43	Request for additional information form
44	Firearms safety course report
45 to 47	Photographs of the licensee, front and back

[12] The records are themselves not numbered. Some of the records have their own numbers that do not correspond with the ministry's index, which matches the PDF document page numbers. For the purpose of this order, page numbers refer to the PDF document page numbers. According to its Index of Records, the ministry claims that all of the records are exempt under sections 14(1)(c), (i) and (l), and 21(1).

ISSUES:

- A. Do the discretionary exemptions for law enforcement exemption in sections 14(1)(c), (i) or (l) apply to some or all of the records?
- B. Do the records contain "personal information" as defined in section 2(1) and, if so, whose?
- C. Does the mandatory personal privacy exemption at section 21(1) apply to the personal information in the records?

⁴ Canadian Police Information Centre.

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

DISCUSSION:

[13] Based on the exemptions claimed by the ministry, the issues in this appeal fall into two categories. The first is the application of the law enforcement exemptions claimed by the ministry. The second relates to the privacy rights of individuals whose personal information is contained in the records.

[14] I will first address the ministry's claim that the records are exempt under sections 14(1)(c), (i) or (l). If I find that any records are exempt under section 14(1), then I cannot consider the application of the public interest override in section 23 to them, since section 23 does not apply to records that are exempt under section 14(1).⁵ Next, I will consider the mandatory personal privacy exemption in section 21(1) over any remaining information that I find not to be exempt under section 14(1). Finally, I will consider whether any personal information that I find to be exempt under section 21(1) is subject to the public interest override in section 23 of the *Act*.

Issue A: Do the discretionary law enforcement exemptions at section 14(1)(c), (i) or (l) apply to some or all of the records?

[15] Section 14(1) sets out exemptions for law enforcement records. It allows an institution to refuse to disclose a record if it can demonstrate that certain harms can reasonably be expected to flow from a variety of circumstances related to law enforcement.

[16] The ministry relies on sections 14(1)(c), (i) and (l) to deny access. These sections state that:

14(1) A head may refuse to disclose a record if the disclosure could reasonably be expected to,

(c) reveal investigative techniques and procedures currently in use or likely to be used in law enforcement;

(i) endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required;

⁵ Section 23 states that "An exemption from disclosure of a record under sections 13, 15, 17, 18, 20, 21 and 21.1 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption."

(l) facilitate the commission of an unlawful act or hamper the control of crime.

[17] Generally, the law enforcement exemptions in section 14(1) must be approached in a sensitive manner, recognizing that it is difficult to predict future events in a law enforcement context.⁶ While harm can sometimes be inferred from the records themselves and/or the surrounding circumstances, it is not enough, however, for an institution to take the position that the harms under section 14(1) are self-evident from the records and can be proven by simply repeating the description of harms in the *Act*.⁷ How much and what kind of evidence is needed will depend on the type of issue and the seriousness of the consequences.⁸

[18] As the institution refusing access to the records, the ministry bears the burden of proving its exemption claims.⁹ It must provide evidence that disclosure of the records could reasonably be expected to result in one or more of the harms in sections 14(1)(c), (i) or (l). It must demonstrate that the risk of harm is real and not just a possibility or speculative,¹⁰ although it does not have to prove that disclosure will, in fact, result in such harm.

Section 14(1)(c): reveal investigative techniques or procedures

[19] Section 14(1)(c) allows the ministry to withhold certain types of information if disclosure could reasonably be expected to reveal investigative techniques or procedures that are currently in use. In order to meet the "investigative technique or procedure" test, the ministry must show that disclosure of the technique or procedure to the public could reasonably be expected to hinder or compromise its effective use.¹¹ The exemption normally will not apply where the technique or procedure is generally known to the public.¹² The technique or procedure must be "investigative."¹³

Representations

[20] The ministry submits that the records are used for a law enforcement purpose, which it says is to protect public safety by regulating the circumstances in which someone may be licensed to acquire and possess a firearm. The ministry says that the records were created between 2004 and 2013 and relate to the licensee's application for, and subsequently a renewal of, a licence under the federal *Firearms Act*.¹⁴ According to the

⁶ *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.) ("Fineberg").

⁷ Orders MO-2363, PO-2040, PO-2435 and *Fineberg*, supra.

⁸ *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 at paras. 52-4.

⁹ Section 53 of the *Act*.

¹⁰ *Merck Frosst Canada Ltd. V. Canada (Health)*, [2012] 1 S.C.R. 23.

¹¹ Order PO-2582.

¹² Orders P-170, P-1487.

¹³ This exemption does not apply to "enforcement" techniques or procedures (see Orders P-1340, PO-2034).

¹⁴ S.C. 1995, c. 39.

ministry, the records are held by the CFO, which is established under the *Firearms Act*, and which reports to both the OPP and the ministry.

[21] The ministry submits that the CFO has a broad statutory mandate to administer the licensing requirements of the *Firearms Act* for the purpose of protecting public safety. The ministry says that, although the CFO has many responsibilities in connection with the *Firearms Act*, for the purposes of this appeal, the applicable one is that the CFO authorizes who can possess and acquire a firearm in circumstances that would otherwise constitute an offence under the *Criminal Code*.¹⁵

[22] The ministry submits that it withheld pages 1, 2, 8, 9, 15 and 18 under section 14(1)(c)¹⁶ because they contain checklists that the CFO uses to consider whether someone should hold a firearms licence. Broadly, the ministry says that the process of how the CFO considers who is granted a firearms licence is not publicly known, and if known, would be expected to harm and interfere with the CFO's mandate to control firearms.

[23] The ministry argues that disclosure of the checklists would harm public safety by undermining the effectiveness of investigative measures that have been put into place pursuant to the *Firearms Act* to assess applications for firearms licences, and to ensure that only qualified applicants are granted licences to acquire and to possess firearms. The ministry says that the checklists are used to assist the CFO in determining whether applicants are eligible to obtain a firearms licence. It argues that disclosure of these checklists would enable applicants for firearms licences to find out the types of checks that are conducted on a licence application or renewal, which could thwart this investigative technique. The ministry says that the contents of the checklists are not well known to the public, and that it is not in the public interest for them to be. The ministry argues that their disclosure would "hinder the ability of the CFO to carry out its responsibilities in relation to"¹⁷ the *Firearms Act*, and that disclosure of even just the eligibility results would reveal the information that had been checked because it is part of the checklists.

[24] The appellant submits that the ministry's representations do not explain potential harms, which the appellant says would necessarily involve a discussion of how someone who planned to deceive a firearms officer would do so more effectively if they saw these checklists. The appellant also says that it is not clear that a screening tool for gun licence applicants is investigative.

¹⁵ As an example, the ministry cites section 91 of the *Criminal Code*, which makes it an offence to possess a firearm, except if the person holds a licence and a registration certificate.

¹⁶ The ministry states in its index of records and decision that it has withheld all of the records under section 14(1)(c), (i) and (l), and, in the alternative, section 21. In its representations, the ministry has argued the application of sections 14(1)(c) and (i) to specific pages only.

¹⁷ Order PO-2582.

Analysis and findings

[25] The purpose of section 14(1)(c) is to protect the effectiveness of law enforcement agencies and their investigative efforts, recognizing that disclosure of specific investigative techniques or procedures could undermine the ability of law enforcement agencies to carry out their duties effectively.

[26] Past IPC orders have found that the CFO qualifies as an agency conducting law enforcement as defined in section 2(1) of the *Act*.¹⁸ The records at pages 1, 2, 8 and 9 appear to be screen grabs extracted from CPIC, which is a law enforcement database established by the RCMP and is used to store and share criminal justice information. The records at pages 15 and 18, although they do not appear in CPIC screen grabs (but are part of the ‘client applications’ portion of the records at issue), also contain firearms eligibility checklists that appear in the CPIC screen grabs.

[27] The IPC has consistently held that CPIC records are investigative and exempt under section 14(1)(c). In Order PO-2582 on which the ministry relies, the adjudicator considered a request for access to “client eligibility checks undertaken by the CFO in relation to the appellant’s” own firearms licence. The adjudicator found that:

...the techniques for checking eligibility to obtain or maintain a firearm license, could reasonably be expected to reveal law enforcement investigative techniques currently in use. In my view, disclosure of these techniques could reasonably be expected to hinder or compromise their effective utilization as it would enable individuals to modify his or her behaviour and activities [to] unlawfully obtain or retain firearms. As such, I conclude that disclosure of this information would hinder the ability of the CFO to carry out its responsibilities in relation to the *Firearms Act*.

[28] Based on my review of the records, I agree with this reasoning and find that it applies to information contained on pages 1, 2, 8 and 9, and also to the checklists on pages 15 and 18. I accept that disclosure of the CPIC screenshots that describe eligibility checks in a database shared by and accessible to law enforcement agencies could reasonably be expected to reveal investigative techniques currently in use in law enforcement. I also find that, where this information is mirrored in the eligibility checklists on pages 15 and 18, its disclosure could be expected to reveal the same investigative techniques that I find are exempt on pages 1, 2, 8 and 9.

[29] While it may be that the public is aware of the CPIC system, the information contained in it and exchanged between law enforcement agencies, and which forms the basis of assessments based in this case on eligibility checklists, is not generally known to the public. I find that disclosure of this information would reveal investigative techniques currently in use by law enforcement agencies and could reasonably be expected to hinder or compromise their effective use by assisting individuals in potentially exploiting or evading law enforcement techniques. Accordingly, I find that the eligibility checklists on

¹⁸ See, for example, Order PO-2582.

pages 1, 2, 8, 9, 15 and 18 are exempt under section 14(1)(c).

Section 14(1)(i): endanger security of system or procedure

[30] Section 14(1)(i) allows an institution to deny access to information about systems or procedures¹⁹ if disclosure could potentially harm their security. For section 14(1)(i) to apply, there must be a reasonable basis for concluding that disclosure of the information at issue could be expected to endanger, among other things, the security of a system or procedure for which protection is reasonably required. Although this exemption is found in a section of the *Act* that deals primarily with law enforcement matters, it can cover any system or procedure that requires protection, even if not connected to law enforcement.

[31] The ministry says that it withheld pages 1-9 under section 14(1)(i). Because I have already found that pages 1, 2, 8 and 9 are exempt under section 14(1)(c), I do not need to consider whether they are also exempt under section 14(1)(i). I will therefore only consider whether the remaining pages (pages 3-7 of pages 1-9, and which are also from CPIC) are exempt under section 14(1)(i).

Representations

[32] The ministry submits that disclosure could reasonably be expected to endanger the security of the CPIC database because these pages contain sensitive personal information and law enforcement assessments, the status of investigations, and codes that are used for the purpose of retrieving data. The ministry argues that disclosure of these records raises heightened security concerns.

[33] The appellant submits that the ministry has not shown how a document that could give some kind of insight into how CPIC functions could endanger its security.

Analysis and findings

[34] The purpose of section 14(1)(i) is to balance the public's right of access to information with the need to protect sensitive law enforcement information.

[35] Pages 3-7 contain various police codes and communications, including from a law enforcement agency. From the records themselves, and applying the reasoning in Order PO-2582 above, I am satisfied that this information contains codes, shorthand and communications unique to CPIC that are accessible to the law enforcement agencies that use CPIC as part of their law enforcement and investigative activities, and that therefore warrant safeguarding for their continued unfettered use.

[36] However, I find that pages 3-7 also contain information primarily about the licensee. This includes information about his conviction and probation, and assessments of, and alerts about, him. Although this information is contained in the CPIC system, the ministry has not provided me with evidence as to how disclosure of this information about

¹⁹ As well as a building or vehicle that requires protection.

the licensee on pages 3-7 could reasonably be expected to endanger the security of the CPIC system.²⁰

[37] Accordingly, although I find information relating to police codes and communications received from a law enforcement agency are exempt under section 14(1)(i), I find that information about the licensee on pages 3-7 is not.

Ministry's exercise of discretion under section 14(1)(c) and (i)

[38] The section 14(1) exemption is discretionary, meaning that the ministry can decide to disclose information that qualifies for exemption. The ministry must therefore exercise its discretion in applying this exemption. On appeal, the IPC may determine whether the institution has failed to do so.²¹

[39] I am satisfied that the ministry properly exercised its discretion in denying access to those portions of the records that I have found to be exempt under section 14(1)(c) and (i). I find that the ministry considered the nature of the information at issue and the law enforcement interests that sections 14(1)(c) and (i) aim to protect. I have no basis to conclude that the ministry exercised its discretion in bad faith or for an improper purpose, and I uphold the ministry's exercise of discretion, and, therefore, its decision to withhold some of the records under sections 14(1)(c) and (i).

[40] I will next consider whether the remaining information that I have not found to be exempt under either sections 14(1)(c) or (i) is exempt under section 14(1)(l), and later, under section 21(1).

Section 14(1)(l): Commission of an unlawful act or control of crime

[41] Section 14(1)(l) permits an institution to deny access to information, including personal information, if disclosure could potentially aid in committing a crime or interfere with law enforcement efforts to control or prevent unlawful activities. For section 14(1)(l) to apply, the ministry must provide a reasonable basis for concluding that disclosure of the information at issue could be expected to facilitate the commission of an unlawful act or hamper the control of crime.

[42] Above I have found that some or all of pages 1 to 9 and 15 and 18 are exempt under sections 14(1)(c). I therefore do not need to consider whether those portions are also exempt under section 14(1)(l).

[43] I will therefore consider section 14(1)(l) in relation to the remaining information that I have not already found to be exempt under section 14(1)(c) or 14(1)(i).

²⁰ I note the ministry's alternative argument, namely that personal information in the records is exempt under section 21(1), which I will address later in this order, under Issue C.

²¹ Where the IPC determines that an institution erred in exercising its discretion (if, for example, it does so in bad faith or for an improper purpose, or fails to take into account relevant considerations but considers irrelevant ones), the IPC may send the matter back to the institution for an exercise of discretion based on proper considerations, but cannot substitute its own discretion for the institution's.

Representations

[44] Although the ministry has expressly indicated in its representations that it has claimed that pages 1-9, and 15 and 18 are exempt under sections 14(1)(c) or (l), it does not specify which remaining pages it believes are exempt under section 14(1)(l). According to the ministry's index, the ministry claims that all of the records are exempt under sections 14(1)(c), (i) and (l), and section 21 (the mandatory personal privacy exemption discussed later in this order). In the circumstances, I understand the ministry's position to be that all of the remaining information in the records – i.e., on pages 10-14, 16-17, and 19-47 – are exempt under 14(1)(l) (and, in the alternative, under section 21 discussed under Issue C), as well as those parts of pages 3-7, 15 and 18 that I have found not to be exempt under sections 14(1)(c) or (i).

[45] The ministry says that the records contain information, including CPIC codes, which would provide data the CFO (and possibly other CFOs in Canada) use to determine who is granted permission to acquire and to possess a firearm. The ministry submits that this information could be used by any third party who obtains access to the records to modify his or her behaviour when applying to possess a firearm in such a way as to interfere with CFO officials seeking to control firearm use. The ministry contends that this could lead to an increase in firearms-related offences, which could facilitate the commission of crime.

[46] The ministry also submits that disclosure could discourage individuals applying for firearms licences, or related persons, from cooperating with the CFO or from being less candid or forthright in response to CFO inquiries if they knew that their personal information provided to the CFO would be subject to disclosure without their consent. The ministry says that this lack of cooperation could reasonably be expected to undermine CFO measures, also potentially leading to a resulting increase in firearms-related offences.

[47] The appellant states that he is not suggesting that the personal information of "blameless and law-abiding firearms owners, or indeed unsuccessful applicants for licences," be disclosed. He submits that the natural extension to the ministry's argument that individuals can be expected to be less candid with the CFO knowing that what they provide is subject to disclosure without their consent, would be to add a proviso that this is so for those individuals who go on to break the law.

Analysis and findings

[48] I find that the information at issue relates to and consists largely of responses provided to the CFO by the licensee on his applications. Any person applying for a PAL would be required to provide this information, so that anyone filling out an application for a firearm licence would become aware of the information sought by the CFO at the time of their application. I am not persuaded that information originating from the licensee's application or requests for renewal or replacement of his PAL could reasonably be expected to facilitate the commission of unlawful acts or impair the control of crime: any applicant for a PAL must complete an application and therefore has access to the

questions contained in it, and to the information collected by the CFO, as part of the application process.

[49] The ministry has also not provided me with a basis to conclude that disclosure of the remaining information at issue, including the information provided by the licensee, could reasonably be expected to facilitate or hamper the control of crime, especially in the context of a case where the licensee obtained a licence even after revealing the type of information the ministry suggests applicants for firearms licences might wish to conceal.

Summary

[50] Above I have upheld the ministry's decision to withheld information on all or portions of pages 1-9, 15 and 19 because of the exemptions in sections 14(1)(c) and (i). Because the public interest override does not apply to records that are exempt under section 14(1), there is no need to consider the possible application of section 23 to override the ministry's application of the section 14(1) exemption.

[51] However, I have also found that the remaining portions of the records contain information that is not exempt under section 14(1).

[52] I will therefore next consider whether the remaining information that I have not found to be exempt under section 14(1) is exempt under the mandatory personal privacy exemption in section 21 of the *Act*.

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

[53] A finding that a record is subject to exemption under section 21(1) is contingent on a finding that the record contains personal information. I must therefore first decide whether the records contain personal information, and if so, whose.

[54] Because I have found portions of the records to be exempt under section 14(1), I will only consider whether the remaining records or portions of records (i.e. the records that I have not found to be exempt, either in whole or in part) contain personal information for the purpose of section 21(1).

[55] Section 2(1) defines “personal information” as “recorded information about an identifiable individual.” Information is “about” an individual when it refers to them in their personal capacity, meaning that it reveals something of a personal nature about them. Information is about an “identifiable individual” if it is reasonable to expect that they can be identified from the information either by itself or combined with other information.²²

[56] Generally, information about an individual in their professional, official or business

²² Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

capacity is not considered to be "about" them, and the *Act* contains specific provisions for information about an individual in such a capacity.²³ Specifically, sections 2(2.1) and (2.2) provide that the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity is not personal information.²⁴

[57] Section 2(1) lists examples of personal information at paragraphs (a) through (h), and most of these paragraphs are engaged in this appeal.²⁵ These include information about a person's race, colour, age or sex (section 2(1)(a)); information about their criminal history (section 2(1)(b)); identifying numbers assigned to them (section 2(1)(c)), addresses and telephone numbers, views or opinions, correspondence sent to an institution (section 2(1)(d) through (g)); and their name where it appears with other personal information or if disclosure of their name would reveal other personal information about them (section 2(1)(h)).

[58] The records all concern or mention the licensee, as they relate to his applications for, and renewal of, a PAL. There is no dispute, and I find that, the records contain the licensee's personal information. This includes his name, phone number, address and date of birth, physical characteristics and photographs of him, correspondence with the CFO and other information about his personal background, including his past interactions with the legal system. The records contain comments about the licensee contained in the CPIC database, including assessments of and alerts about him.

[59] Collectively, I find that this is the licensee's personal information within the meaning of paragraphs (a), (b), (c), (d), (f), (g) and (h) of section 2(1).

[60] The records also contain the names, addresses and telephone numbers of individuals who acted either as a photo guarantor or as references in support of the licensee's application, the name of an individual who endorsed a photograph, as well as

²³ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

²⁴ Even if an individual carries out business professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling. Section 2(2) also states that a personal information does not include information about an individual who has been dead for more than thirty years.

²⁵ These paragraphs read:

- (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,
- (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 that 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.

names of individuals connected with the licensee's probation conditions. I find that this is their personal information within the meaning of paragraphs (d) and (h) of section 2(1).

[61] Where the records contain a reference to the death of the licensee's former girlfriend but not her name, because the notation reveals the nature of her relationship with the licensee and mentions her death, I find that it is her personal information since it renders her identifiable by connection to the licensee and the circumstances of their deaths.²⁶

[62] Finally, the records contain the names of individuals who maintained a log or who input entries into a computerized system that tracked information about, including the status of, the licensee's application. I find that information that identifies these individuals in the context of their day-to-day professional activities is not their personal information, but rather is information about them acting in their business or professional capacity. I am satisfied that disclosure of these individuals' names, or their notations about the licensee's application and its status, would not reveal anything of a personal nature about them. As this information is not personal information as it is defined in section 2(1), it cannot be withheld under section 21(1).

[63] Because the records contain the personal information of various individuals in addition to the licensee, I will next consider the ministry's position that the remaining records or portions of records that I have found not to be exempt under section 14(1) are exempt under section 21(1) because disclosure of any portion of them could result in an unjustified invasion of personal privacy.

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

[64] One of the purposes of the *Act* is to protect the privacy of individuals with respect to their personal information held by institutions.²⁷ The mandatory personal privacy exemption in section 21(1) creates a general rule that prohibits an institution from disclosing another individual's personal information to a requester. The *Act* also allows for exceptions to this general rule, which are set out in sections 21(1)(a) to (f). If any of the exceptions exist, an institution is required to disclose the information.

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

²⁶ Section 2(2) of the *Act* states that personal information does not include information about an individual who has been dead for more than 30 years, so that their personal information in the records continues to be the victims and licensee's personal information within the meaning of section 2(1) because their deaths occurred in 2013.

²⁷ Section 1(b) of the *Act*.

be disclosed.

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

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

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

- section 21(2) sets out a list of considerations, or factors, that help in deciding whether disclosure would or would not be an unjustified invasion of personal privacy for the purpose of section 21(1)(f);
- section 21(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy; and,
- section 21(4) lists circumstances in which the disclosure of personal information does not constitute an unjustified invasion of personal privacy, despite section 21(3). None of the circumstances listed in section 21(4) is relevant to the information at issue in this appeal.

[68] As for the relevant sections, section 21(3) should generally be considered first. If any of the presumptions in section 21(3) apply, disclosure of personal information is presumed to be an unjustified invasion of personal privacy. This means that the personal information cannot be disclosed unless there is a compelling public interest in disclosure that outweighs the purpose of the mandatory personal privacy exemption.²⁸

[69] Where no presumption against disclosure in section 21(3) applies to the information, the factors listed in section 21(2) are considered. To find that disclosure does not constitute an unjustified invasion of personal privacy, one or more factors and/or circumstances described in section 21(2) favouring disclosure must exist. The list of factors under section 21(2) is not exhaustive. This means that the ministry must also consider any circumstances that are relevant, even if they are not listed under section 21(2).²⁹

[70] The ministry claims that the records are subject to the presumption against disclosure in section 21(3)(b) because it says they were compiled and are identifiable as part of an investigation into a possible violation of law. Accordingly, after summarizing the parties' positions, I will consider section 21(3)(b) first.³⁰ Because I find, for the reasons set out below, that this presumption does not apply to the remaining information

²⁸ *John Doe v. Ontario (Information and Privacy Commissioner)*, (1993), 13 O.R. (3d) 767 (Div. Ct). Section 23 contains the "public interest override," discussed at Issue D in this order.

²⁹ Order P-99.

³⁰ Since, if the presumption applies, the information is exempt under section 21(1).

that I have found not to be exempt under section 14(1), I will then consider whether any factors in section 21(2) apply to weigh in favour or against disclosure of the personal information in the records. In this appeal, the relevant factors I will consider are those in sections 21(2)(a), (b) and (f), which balance the desirability of subjecting the activities of government agencies to public scrutiny and which may promote public health and safety, against the privacy interests in information that may be highly sensitive, respectively.

Representations

[71] The ministry submits that the records "were collected for the purpose of conducting an investigation under the [*Firearms Act*]" and that "[t]his investigation is listed on page 15 of the records as having been initiated as a result of the 2013 incident which led to the affected third party individual [the licensee] and another person dying as part of a murder suicide." The ministry says that the *Firearms Act* creates a series of offences which can result in charges, and that this personal information was collected as part of a law enforcement investigation into whether an offence had been committed.

[72] The ministry submits that there is a reasonable expectation of confidentiality in the licensee's personal information contained in the CPIC records, and that disclosure can be expected to cause significant distress to the licensee's family, as well as to anyone whose personal information was collected, used and maintained in CPIC. The ministry argues that the factor in section 21(2)(f) applies to the personal information in the record and weighs against its disclosure because the information is highly sensitive.

[73] The appellant submits that the factors in sections 21(2)(a) and (b) apply and weigh in favour of disclosure. The appellant argues that it would be hard to imagine a more compelling case in which disclosure is so clearly desirable for the purpose of subjecting the activities of the government and its agencies to public scrutiny (the factor in section 21(2)(a)). He submits that public scrutiny in this case – in which an administrative decision potentially contributed to an innocent person's death – is necessary and long overdue.

[74] The appellant also argues that violent crime and suicide are public health and public safety issues (the factor in section 21(2)(b)). He says that most Canadian firearm deaths are suicides, which he says raises the possibility that the life saved by denying a potential firearm owner a licence, in a case where there is a basis to do that, may be that of the applicant. The appellant submits that, given that public discussion shapes public policy, an analysis of flaws in our system of granting gun licences at least has the potential to lead to a less flawed one, with the potential for saving lives. The appellant submits that the ministry's position is effectively that there should not be any public explanation or accountability for a decision "which clearly contributed to some degree to the loss of an innocent person's life."

[75] The victim's mother consents to the disclosure of her daughter's personal information in the records.

Analysis and findings

[76] In considering the exception in section 21(1)(f), I must determine whether disclosure of all or any portion of the remaining records at issue would constitute an unjustified invasion of the personal privacy of any individual whose personal information is contained in them.

Does the presumption against disclosure in section 21(3)(b) apply?

[77] Under section 21(3)(b), the disclosure of personal information is presumed to be 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 of law or to continue the investigation.

[78] The presumption in section 21(3)(b) is not contingent on the laying of charges. It only requires that there be an investigation into a possible violation of law.³¹

[79] Based on my review of the records, I find that they were not compiled, nor are they identifiable as part of an investigation into a possible violation of law.

[80] The ministry states that the relevant investigation is described at page 15 of the records, and that it was initiated because of the 2013 murder-suicide. I disagree with the ministry's representations that the records were used for the purposes of this investigation. As the ministry says elsewhere in its representations, and I find that, the records were "created between 2004 and 2013 and relate to [the licensee's] application for a licence and subsequently a renewal of that licence under the *Firearms Act*." It is apparent from the records themselves and the ministry's representations that they were created before any investigation was prompted by the murder-suicide, and that any investigation between 2004 and 2013 was limited to an assessment of the licensee's application and suitability for a PAL. Page 15 simply records that the PAL was suspended as a result of the murder-suicide so that an investigation may follow. The ministry has not explained that this investigation would be an investigation into a possible violation of law (especially in view of the licensee's death), rather than an investigation into potential issues in the licensing process that led to a decision to grant this particular licensee a PAL; on balance, I find that the latter would not involve a possible violation of law.

[81] Accordingly, I find that the presumption against disclosure in section 21(3)(b) does not apply.

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

[82] I will next consider whether the remaining information is exempt under section 21(1) by considering the possible application of factors in section 21(2), under which the ministry is required to consider "all the relevant circumstances" in determining whether a

³¹ Orders P-242 and MO-2235.

disclosure of personal information constitutes an unjustified invasion of personal privacy. As I have already described above, the ministry relies on the factor in section 21(2)(f) (highly sensitive), while the appellant relies on the factors in section 21(2)(a) (public scrutiny) and 21(2)(b) (public health and safety).

Section 21(2)(a): public scrutiny

[83] The purpose of section 21(2)(a) is to promote transparency of government actions. It contemplates disclosure of information where it is desirable for the purpose of subjecting the activities of government (as opposed to the views or actions of private individuals) and its agencies to public scrutiny.³² In applying this factor, an institution should consider the broader interests of public accountability when considering whether disclosure is desirable or appropriate to allow for public scrutiny of its activities.³³

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

[84] Section 21(2)(b) requires the ministry to consider whether access to the personal information at issue may promote public health and safety.

Section 21(2)(f): highly sensitive

[85] In determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, section 21(2)(f) requires the ministry to consider whether the personal information is highly sensitive. To be considered highly sensitive, there must be a reasonable expectation of significant personal distress if the information is disclosed.³⁴

[86] My consideration of the factors in section 21(2) relates only to personal information that is not exempt under section 14(1).

[87] I find that the factor in section 21(2)(f) applies to the records, insofar as they relate to the licensee's application to possess a firearm, and contain information about his interactions with law enforcement and the circumstances of his and his victim's deaths. In the circumstances, I also find that the personal information belonging to individuals other than the licensee and victim – namely, his references, photo guarantor, and individuals identified in connection with the licensee's probation conditions – is highly sensitive and that its disclosure could reasonably be expected to cause them significant distress because of its connection with the criminal justice system or to an individual whose weapon was used in a murder-suicide.

[88] I find, however, that section 21(2)(a) applies and weighs in favour of disclosure of some of the licensee's personal information as well as the victim's, and that it outweighs the factor in section 21(2)(f). In the circumstances, I have given the factor in section 21(2)(a) significant weight. I have also given some weight to the factor in section

³² Order P-1134.

³³ Order P-256.

³⁴ Orders PO-2518, PO-2617, MO-2262 and MO-2344.

21(2)(b), in view of the ministry's position that the CFO's mandate includes administering the licensing requirements of the *Firearms Act* "for the purpose of protecting public safety."

[89] I find that, on balance, the circumstances underlying this appeal make disclosure of some of the licensee's and the victim's personal information desirable for the purpose of subjecting the CFO's decision to public scrutiny. I find that the factor in section 21(2)(a) weighs in favour of disclosure of this personal information, so that it is not exempt under section 21(1). The personal information that I will order disclosed may reveal information about a decision made as part of a process that the ministry submits is intended to protect the public but which, in this case, is arguably connected to loss of life: according to the Coroner's Death Review Committee Report, the licensee was on probation for a violent offence at the time he submitted his application. He was later charged with an offence in connection with his purchase of firearms after his licence was granted. His licence was renewed notwithstanding the new charge. The coroner's death review committee report also reveals a history of domestic violence involving prior partners, a history of psychological instability and, as noted above, identified the licensee's access to firearms as a risk factor in the victim's relationship with him.

[90] I make no findings about whether the licensee's history ought to have disqualified him from lawfully possessing firearms. However, I agree with the appellant and find that, where an individual with a history of violence applies for a weapon while still on probation for a violent offence, disclosure of information relating to the CFO's decision to grant that individual a PAL is desirable for the purpose of subjecting it to public scrutiny. I further agree with the appellant that this is so because a licensed firearm was used to kill an innocent person and then the licensee himself.

[91] In these circumstances, I accept the appellant's submission that this is a clear case where the integrity of the CFO's assessment of an individual's suitability to possess weapons, as well as its ability to protect the public, have been called into question. I find that the desire for public scrutiny in this case stems not only from the fact that the licensee used a legally-owned weapon to kill his former girlfriend, but from a concern in understanding how he could have been assessed as a suitable candidate to possess a firearm when his application was submitted while he was still on probation for a conviction for assault and forcible confinement.

[92] I find, therefore, that disclosure of some of the licensee's personal information and the victim's personal information would not be an unjustified invasion of their personal privacy because the factors favouring disclosure in sections 21(2)(a) and (b) that favour disclosure outweigh the factor in section 21(2)(f) that favours non-disclosure. As noted above, I have also considered the victim's mother's consent to disclosure of her daughter's personal information in the records.

[93] Accordingly, this information is not exempt under section 21(1) and the ministry must disclose it to the appellant. I find that the factors in either section 21(2)(a) or (b) do not apply to weigh in favour of the remaining personal information belonging to the licensee, which includes recorded information about him such as his name, date of birth

and physical characteristics, photographs, driver's licence, passport or credit card numbers, and contact information.

[94] For individuals other than the licensee and the victim, I find that the factor in section 21(2)(f) is the only relevant factor, and I find no basis to conclude that the factors in section 21(2)(a) or (b) apply to this personal information to favour its disclosure. Because the factor in section 21(2)(f) weighs against disclosure, I find that their personal information is exempt under section 21(1) and must not be disclosed.

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

[95] Because I have found above that some personal information belonging to the licensee is not exempt under section 21(1), I do not need to consider whether the public interest override in section 23 applies to it. My consideration of the public interest override applies only to the personal information that I have found to be exempt. This is:

- the licensee's name, address and contact information, driver's licence, passport and credit card numbers, and descriptive information about him or his physical characteristics or photographs
- the names, addresses or contact information of other identifiable individuals, namely, the names of individuals associated with the licensee's conditions of probation, and the names and contact information of individuals who appear in the records as a photo guarantor and references.

[96] Section 23, the "public interest override," applies in circumstances where an exemption would otherwise be made out. It states:

An exemption from disclosure of a record under sections 13, 15, 17, 18, 20, 21 and 21.1 does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

[97] For section 23 to apply, two requirements must be met: there must be a compelling public interest in disclosure of the records, and this interest must clearly outweigh the purpose of the exemption.

[98] Previous IPC orders have stated that, in order to find a compelling public interest in disclosure, the information in the records must serve the purpose of informing or enlightening citizens 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.³⁵ The IPC has also found that a

³⁵ Orders P-984 and PO-2556.

“public interest” does not exist where the interests being advanced are essentially private in nature.³⁶

[99] I have already found above that certain information contained in the records, (which includes the licensee’s applications, assessments of and alerts about him, and information about the status of his applications) is not exempt under section 21(1) because its disclosure is desirable for subjecting the government and its agencies to public scrutiny in relation to the decision to grant and renew the licensee’s PAL.

[100] I have therefore only considered whether section 23 applies to descriptive or biographical information about the licensee, and the personal information belonging to other identifiable individuals contained in the records (except the victim).

[101] The parties have not identified a compelling public interest in disclosure of this information and I find that there is none. I accept that there may be some interest in knowing who provided references in support of the licensee’s application, but I find that it does not rise to the level of compelling. I also find no basis to conclude that there is a public interest in the names of other individuals identified in relation to the licensee’s probation conditions. I find no basis to conclude that disclosure of this information would inform or enlighten a discussion about the CFO’s decision-making in relation to the licensee’s application, particularly given my finding that all of the information about the licensee relating to his application, including alerts, assessments, status logs and the application forms themselves, must be disclosed.

[102] I will therefore order the ministry to sever the licensee’s descriptive personal information (including his name, contact information, driver’s licence, passport and credit card numbers) and others’ personal information in the copy of the records that is being ordered disclosed.

CONCLUSION:

[103] For all of these reasons, I will order the ministry to disclose a severed version of the records to the appellant by removing information that is exempt under sections 14(1)(c) and (i), and by removing some of the licensee’s personal information and the personal information of some individuals other than the licensee.

ORDER:

1. I uphold the ministry’s decision in part.
2. I order the ministry to disclose to the appellant a severed version of the records, in accordance with the copy of the records being provided with the ministry’s copy of this

³⁶ Orders P-12, P-347 and P-1439.

order. The ministry shall disclose a copy of the severed records to the appellant by **November 14, 2023** but not before **November 9, 2023**.

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



October 10, 2023

Jessica Kowalski
Adjudicator