Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER PO-2811

Appeal PA08-213-2

Ministry of Community Safety and Correctional Services

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NATURE OF THE APPEAL:

Under the *Freedom of Information and Protection of Privacy Act* (the *Act*), the appellant submitted a request to the Ministry of Community Safety and Correctional Services (the Ministry) for:

> an electronic copy of the Ontario sex offender registry, edited in such a way as to show only the first three characters of the holder's postal code (eg. M6G). Any database, spreadsheet or text program is acceptable.

The Ministry issued a decision denying access to the record in full, citing sections 14(1)(e), 14(1)(l), 21(1), 21(2)(e), 21(2)(f), and 21(2)(h).

The requester (now the appellant) appealed this decision. The appeal was assigned to a mediator to see if any of the issues could be settled.

During mediation, the Ministry provided this office with the record, which contains the first three characters of Ontario's postal codes in one column (often referred to as the "Forward Sortation Area" or "FSA"), and a second column of figures, representing the number of individuals listed on the Ontario Sex Offender Registry (OSOR) who reside in the corresponding postal code. The appellant confirmed that, in addition to the first column of the record, the second column is included within the scope of his request and is therefore part of this appeal. The Ministry has accepted this position. Accordingly, both columns in the record are at issue in this appeal.

No further mediation was possible and this appeal was moved to adjudication, where it was assigned to me to conduct an inquiry. I initially sent a Notice of Inquiry to the Ministry outlining the facts and issues in the appeal, and inviting the Ministry to provide representations. I received representations from the Ministry, including an affidavit sworn by a Superintendant with the Ontario Provincial Police (O.P.P.). I then sent a Notice of Inquiry and the Ministry's complete representations to the appellant, seeking representations. I received representations from the appellant, whose representations referred to the public interest in the information he had requested. The appellant also provided a chart showing the number of individuals residing in each FSA. I then invited the Ministry to respond to the appellant's representations, including the impact of the number of residents in each FSA in the chart provided by the appellant. I also invited the Ministry to provide representations on the "public interest override" found at section 23 of the *Act* because of the public interest the appellant had referred to in his representations. I subsequently received reply representations from the Ministry.

Because of the way I have resolved the issues in this appeal, it will not be necessary for me to consider whether section 23 of the *Act* applies, and I will not refer to it again in this order.

RECORD:

The responsive record identified by the Ministry is a fourteen page list consisting of the first three characters of Ontario's postal codes (or FSAs) in one column, and a second column of figures, representing the number of individuals listed on the OSOR who reside in the corresponding FSA.

By way of background, the Ministry advises that the FSA is associated with the location of the postal facility from which mail delivery originates. Each FSA has a specific geographical boundary. The number of FSAs varies from region to region. For example, the City of Ottawa has 40 FSAs, whereas the Town of Dryden has only 1 FSA.

Further background information about FSAs was provided by the appellant, who produced a chart showing the number of residents in each FSA in Ontario. The smallest number of residents in one FSA is 396, and the highest is 113,918. The appellant further advises that the FSAs in Ontario have an average population of 24,823.

DISCUSSION:

GENERAL SUBMISSIONS

The OSOR is maintained pursuant to an Ontario statute known as *Christopher's Law*. The Ministry's representations begin by discussing the purpose of *Christopher's Law*, in effect arguing that because of the use of the OSOR in law enforcement, public access to any portion of it would be inappropriate.

The Ministry states that *Christopher's Law* came into effect in April 2001. It requires the Ministry to establish and maintain a registry containing personal information about sex offenders. The OSOR is a registration system for sex offenders who have been released into the community requiring them to report annually to their local police service. During the registration process, police enter the offenders' personal information into the OSOR database, including the individual's name, date of birth, current address, current photograph and the relevant sex offence(s).

In addition, individuals are required to notify the police within 15 days of a change of residence, or if leaving Ontario, and to confirm the address of their current residence on an annual basis.

The Ministry states:

> The OSOR database provides police services with critical information that improves their ability to investigate sex-related crimes as well as to monitor and locate sex offenders in the community. In contrast to some other jurisdictions with sex offender registries, the public in Ontario does not have access to the information contained in the OSOR. The information is kept confidential by the police.
>
> Where, however, a need for community notification arises, the *Police Services Act*, as amended by the *Community Safety Act*, empowers locate police chiefs and the Commissioner of the Ontario Provincial Police to publicly disclose information about offenders considered to be a significant risk to the community.
>
> …

> The OSOR is an investigative tool for by law enforcement officials only. The primary use of the OSOR for law enforcement and crime prevention is firmly established in the legislative history of *Christopher's Law*.

The Ministry also relies on a decision of the Ontario Court of Appeal, in which a sex offender who was charged with failing to report to police challenged the constitutional validity of *Christopher's Law*. In *R. v. Dyck* (2008), 90 O.R. (3d) 409, the Court ruled that *Christopher's Law* was constitutional and that the sex offender's rights had not been violated.

In commenting on the offender's rights under the *Canadian Charter of Rights and Freedoms* in *R. v. Dyck*, Justice R.A. Blair commented on the use of information contained in the OSOR, as follows:

> The appellant argues that there is a liberty-infringing "stigma" attached to the requirement to register. For the reasons outlined earlier in this decision, I do not accept this argument. *The fact of registration is confidential except to police authorities, and therefore not widely known*… [Emphasis added.]
>
> It is important to note that the use of information contained in the Registry is strictly limited to use by police personnel for crime prevention or law enforcement purposes. Subject to that use, s. 10 of *Christopher's Law* prohibits disclosure of information obtained from the Registry except as provided for in the Act for the purpose of "crime prevention or law enforcement purposes."

This analysis was conducted in relation to section 7 of the *Charter*, which provides that:

> Everyone has the right to life, liberty and security of the person and they right not to be deprived thereof except in accordance with the principles of fundamental justice.

From this context, and the passage quoted above, it is evident that the offender's argument was based on a perceived threat to his security of the person from being identified as a sex offender.

In my view, in assessing the impact of *R v. Dyck*, and the Ministry's general submission to the effect that the OSOR should be used for law enforcement purposes only and should not be available to the general public, it is essential to bear in mind that the appellant does *not* seek access to the entire database. He only asks for a list of the FSAs in Ontario and the number of registered sex offenders living in each FSA. He is not asking for personal information in the OSOR, such as offenders' names, addresses and the offences of which they have been convicted. The question of whether the requested information relates to identifiable individuals is addressed under the heading, "personal information" below. For the reasons stated in detail in that discussion, my conclusion is that the requested information would *not* reasonably identify any individual listed in the database.

Therefore, in my view, the information that is at issue in this case does not impinge on the section 7 interest referred to by the Court in *R. v. Dyck*. Later in this order, I will explore whether it is exempt under the law enforcement provisions cited by the Ministry, but I am satisfied that it does not conflict with the stated purpose of the OSOR for use in law enforcement because what the appellant has asked for does not entail substantive disclosure of the sensitive and highly detailed information about offenders.

The Ministry also reviews previous requests and appeals, and refers to sections 10 and 13 of *Christopher's Law*. Section 10(1) states, in part, that "… no person shall disclose to another person information obtained from the sex offender registry in the course of his or her duties under this Act except as provided by this Act." The remaining parts of section 10 refer to access to the registry by police officers, disclosure between police forces, and indicate that such disclosures are deemed to be in compliance with the disclosure provisions of the *Act* and the *Municipal Freedom of Information and Protection of Privacy Act* (the municipal *Act*). Section 13(1) permits personal information to be collected, retained, disclosed and used in accordance with *Christopher's Law* "despite" the *Act* and the municipal *Act*.

The Ministry also refers to section 67(1) of the *Act*, which states:

> This Act prevails over a confidentiality provision in any other Act unless subsection 2 or the other Act specifically provides otherwise.

Section 67(2) of the *Act* lists a number of confidentiality provisions in other statues that prevail over the *Act*, but does not identify any section of *Christopher's Law* as such a provision. To qualify under section 67(1), the other statute (in this case, *Christopher's Law*) must therefore contain a confidentiality provision that specifically provides that it prevails over the *Act*.

In a previous appeal, the Ministry argued that section 10 of *Christopher's Law* was a confidentiality provision which, read in conjunction with section 67(1) of the *Act*, prevails over the *Act*. That appeal was dealt with in Order PO-2312, issued by former Assistant Commissioner Tom Mitchinson. In rejecting the argument that section 10 prevails over the *Act*, the former Assistant Commissioner stated:

> In my view, section 10(4) does not "specifically provide" that section 10(1) prevails over the *Act*. … [S]ection 10(4) of *Christopher's Law* provides for, rather than prohibits, the disclosure of personal information by individuals within the policing sector, despite specific listed provisions of the *Act* (section 42(e) and its equivalent provision in the municipal statute) that could, in certain circumstances, prevent disclosure in a manner that would be inconsistent with the policy objectives of *Christopher's Law*. Section 10(4) in effect deems the collection, retention, use and disclosure permitted by sections 10(2) and (3) to also be permitted under the *Act*. *The section does not prohibit the disclosure of information, nor does it contain the degree of specificity necessary to bring the provision within the scope of section 67(1).* [Emphasis added.]

Section 10(1) of *Christopher's Law*, which does prohibit the disclosure of information obtained by police staff in the course of their duties from the registry, does *not* state that it prevails over the *Act*. As Ministry points out, in Order PO-2312 the former Assistant Commissioner went on to observe that:

> Public access rights under Part II of the *Act* are not specifically addressed in section 10, nor can any restriction on these rights reasonably be inferred from the detailed framework of this section, whose policy intent is clearly stated and does not deal in any way with a right of access.

I agree with the former Assistant Commissioner that section 10 of *Christopher's Law* is not a confidentiality provision that prevails over the *Act*. Nor does it address a situation where a request is made under the *Act*, since it refers to disclosure of information obtained by police in the course of their duties under *Christopher's Law*.

The ministry does not challenge the conclusion reached in Order PO-2312. In my view, there is *no* question that the requested information is subject to the *Act*, and for that reason, it is important to note that, as a record in the Ministry's custody and under its control, the OSOR *is* subject to the access provisions and the exemption scheme in the *Act*. Section 10(1) of the *Act* states that:

> Every person has a right of access to a record or part of a record in the custody or under the control of an institution unless,
>
> (a) the record or the part falls within one of the exemptions under sections 12 to 22; or
>
> (b) the head is of the opinion on reasonable grounds that the request is frivolous or vexatious.

While the Ministry does not deny that the record is subject to the *Act*, it is necessary to point out that the basic access and exemption structure provide by the *Act* is essential in understanding the context in which the appellant made his request, and the manner in which the Ministry's arguments must be assessed in this appeal.

The question before me is whether the parts of the OSOR requested by the appellant are exempt from disclosure under the *Act*. I now turn to that discussion.

PERSONAL INFORMATION

In order to determine if the personal privacy exemption applies, it is necessary to decide whether the record contains "personal information" and, if so, to whom it relates. That term is defined in section 2(1) as follows:

> "personal information" means recorded information about an identifiable individual, including,
>
> (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
>
> (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
>
> (c) any identifying number, symbol or other particular assigned to the individual,
>
> (d) the address, telephone number, fingerprints or blood type of the individual,
>
> (e) the personal opinions or views of the individual except if they relate to another individual,
>
> (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
>
> (g) the views or opinions of another individual about the individual, and
>
> (h) the individual's name where 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;

The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information [Order 11].

To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed [Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.)].

The Ministry submits that the definition of personal information is "ever-broadening", relying on a paper entitled *The New Federated Privacy Impact Assessment (F-PIA) Building Privacy and*

Trust-enabled Federation, co-written by the Commissioner, Dr. Ann Cavoukian. The Ministry quotes the following passage from this paper:

> Personal information is any information, identifying or otherwise, *relating to an identifiable individual*. Specific PI [personal information] may include one's name, address, telephone number, date of birth, age, marital or family status, e-mail address, etc. For example, credit cards, debit cards, social insurance/security numbers, driver's licenses and health cards contain a great deal of sensitive personal information. Moreover, it is also important to point out that almost any information, *once linked to an identifiable individual*, becomes personal information, be it biographical, biological, genealogical, historical, transactional, locational, relational, computational, vocational or reputational… [My emphases]

I disagree with the Ministry's suggestion that this description "broadens" the definition of personal information in the context of the *Act*, which is set out in section 2 and quoted above. While it may be that, as new media emerge and new forms of personal information come into being, personal information could be viewed as an expanding category, but this does not affect the criteria for what is considered to be "personal information." In fact, in the passage quoted by the Ministry, the article twice refers to the need for information to be linked to an *identifiable* individual, which is the hallmark of personal information as defined in the *Act*. This is also consistent with the approach taken by the Ontario Court of Appeal in *Pascoe* (cited above), in which the Court stated that, in order to qualify as personal information, "it must be reasonable to expect that an individual may be identified if the information is disclosed."

The Ministry submits that the requested information is the FSA contained in the home addresses of all registered sex offenders in Ontario. The Ministry therefore submits that, in the circumstances of the request, the record should be viewed as containing personal information about potentially identifiable registered sex offenders, specifically, information relating to the criminal history and address of these individuals. In my view, the question of whether the number of sex offenders residing in an FSA qualifies as personal information turns on the question of identifiability.

In that regard, the Ministry submits that release of the requested information in conjunction with other publicly available information sources could make it easier for someone to identify the home address of a registered sex offender. Available information sources that might be used for cross-referencing that are referred to at various points in the Ministry's representations and reply representations include the internet, newspapers, voter registration lists, occupational licensing registries, property records, crime/court records, corporate proxy statements, stock holding reports, city directories, birth, death and marriage records. The Ministry indicates that some of these possible sources of information are cited in a paper published by the United States Federal Committee on Statistical Methodology entitled *Identity in Microdata Files*.

What the Ministry does not do is explain how any of these cross-referencing sources interacts with the fact that a certain number of offenders may reside within any given FSA. How could

occupational licensing registries, for example, possibly cross-reference to that information and identify an offender? If an assiduous individual obtains and studies court/crime records, they may be able to glean the name and last known address of an offender, and perhaps find them using other resources such as telephone directories or other sources listed above. In my view, however, this process would *in no way* be assisted by knowing that a certain number of offenders live in a particular FSA, given that even the smallest FSA comprises 396 individuals, and on average an FSA contains more than 24,000 residents.

In the affidavit accompanying the Ministry's submissions, a Superintendent of the O.P.P. attests that multiple requests for the type of information requested by the appellant could identify movement by a new offender into an FSA area – for example, an FSA that had 6 offenders might have 7 on the next request. Given the number of people who reside in an FSA, however, I do not believe that even multiple requests for the number of offenders in each FSA could lead to the reasonable prospect that an offender could be identified. I also note that, in this appeal, I am not dealing with multiple requests for this information, nor am I aware that multiple requests of this nature have been made.

In a similar vein, the Ministry submits that there are five or fewer registered sex offenders residing in 45% of Ontario's FSAs. The Ministry submits that this comprises a "small cell" count. The term "small cell" count refers to a situation where the pool of possible choices to identify a particular individual is so small that it becomes possible to guess who the individual might be, and the number that would qualify as a "small cell" count varies depending on the situation. The Ministry has misapplied the concept of "small cell" count here. If, as the Ministry argues, 5 individuals is a "small cell" count, this would mean a person was looking for one individual in a pool of 5. By contrast, the evidence in this case indicates that one would be looking for 5 individuals in a pool of anywhere from 396 to 113,918. This is not a "small cell" count.

The Ministry also submits that the information requested in this appeal must not be viewed in isolation, but in conjunction with the additional information revealed about sex offenders in Ontario, such as:

- the registered sex offender is or was a resident of Ontario;
- the registered sex offender was convicted of one or more of the criteria offences listed in *Christopher's Law* after April 21, 2001 or was serving a sentence on that date; and
- the registered sex offender's current home address is located within the geographical boundaries of the relevant postal code FSA.

This does not assist the Ministry in its argument that disclosing the information in the record would cause individual registered sex offenders to be "identifiable."

For his part, the appellant submits that the information requested in this appeal could not lead to the identification of a particular sex offender. He states:

> I do not find it plausible that, for example, the information that there are three registered sex offenders in an area of 28,000 people could lead to an individual being accurately identified.
>
> …
>
> The real question is at what geographical level information about the sex offender registry can be released without there being a reasonable expectation that an individual may be identified by the disclosure of the information.
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> The Ministry considers it acceptable to release information at the level of the whole province. The Commissioner, in PO-2518, decided that a six-digit postal code was too small …. [and] also decided that police jurisdictions in the low thousands were acceptable, and ordered the release of that data. I have shown that releasing sex offender data for smaller police jurisdictions is the equivalent of releasing it by forward sortation areas, and have argued that in effect the issue in this appeal was already decided in PO-2518.

As already noted, the record at issue in this appeal consists of two columns, one containing a list of FSAs and another showing the number of sex offenders registered in the OSOR who live in each FSA, as of the date of the request. The record does not contain the names of any individuals or any other indentifying information. The issue I have to decide is whether the record contains information that is "about identifiable individuals." As affirmed by the Court of Appeal in *Pascoe* (cited above), the question is whether it is "reasonable to expect that an individual may be identified if the information is disclosed."

Having carefully considered the submissions of the parties and the nature of the record, I find that it is not reasonable to expect that an individual may be identified as a consequence of disclosing the requested information. Accordingly, I find that the record does not constitute "personal information."

In Order PO-2518, I was satisfied with the evidence before me that disclosing the full postal codes of registered sex offenders in Ontario could reasonably be expected to identify those individuals. Due to the very sensitive context of an individual being listed on the OSOR, I expressed concerns about those situations where a postal code may be limited to five or six houses. I stated:

> …In my view, the circumstances of each case must be considered in deciding what constitutes a "small cell count". As well, the Ministry's comments about the dangers of vigilantism, and well-documented public concern about the place of residence of released sex offenders are pertinent considerations in the circumstances of this appeal. Given the possibility of ongoing observation and/or

> surveillance in the context of vigilantism, I am satisfied that the ability to pinpoint the location of an offender's residence within five or six houses is small enough to make the identity and/or the residence location of an individual reasonably identifiable.

In commenting on Order PO-2726, in which Adjudicator Daphne Loukidelis distinguished Order PO-2518 and ordered the Ministry to disclose the full six-digit postal codes and total sentence length of thousands of provincially sentenced inmates, the Ministry states that:

> [D]isclosure of six character postal codes in the right circumstances could allow someone to pinpoint the residence of an offender to his or her actual address. A postal code may reveal the address of an offender to his or her actual address. In some urban areas, a designated postal code may be assigned to a single apartment building or part of a townhouse complex.

Unlike full six-digit postal codes, however, I note that the smallest number of residents in an FSA in Ontario is 396, and the average is over 24,000. This is not comparable in any way to an area containing only five or six houses. In my view, my finding in Order PO-2518 withholding the number of offenders by full postal code is entirely distinguishable from the facts of this case.

Moreover, in Order PO-2518 I also ordered the Ministry to disclose the total number of registered sex offenders by police division and by the type of offence committed, because I was not persuaded that this type of information could possibly result in the identification of any individual.

I stated:

> …[E]ven if there is only one offender in one of these categories, that information does not identify any individual, nor does the Ministry explain what other publicly available information might establish a nexus connecting the information in these two categories with any individual.
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> …
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> I am therefore not satisfied that the information responsive to requests 2 and 3 is about "identifiable" individuals and on that basis, I find that it does not qualify as "personal information".

In this appeal, the appellant submits that the disclosure of the number of registered sex offenders by the FSA is equivalent to the disclosure of the number of registered sex offenders by police jurisdiction, which I ordered to be disclosed. Based on the evidence before me, I agree with the appellant's position that it would not be possible to identify a particular sex offender by reviewing a list containing the number of sex offenders residing in each FSA in Ontario.

I have already dealt with the Ministry's submission that a particular individual could be identified by taking the information contained in the record and cross referencing it with publicly available databases and sources, such as newspapers and the internet. While this is not the basis for my conclusion that the record does not identify any individual, I note that the Ministry has not provided any evidence that the information that was disclosed as a result of Order PO-2518 resulted in the identification of a particular sex offender in Ontario.

Given that it would not be reasonable to expect that a particular individual may be identified as a consequence of disclosing the information contained in the record, I find that the information at issue is not personal information as defined under section 2(1) of the *Act*.

Because only personal information can be exempt under the personal information exemption found at section 21(1), I find that it does not apply.

LAW ENFORCEMENT

The Ministry claims that sections 14(1)(e) and 14(1)(l) of the *Act* apply to the information at issue (i.e., the number of registered sex offenders by the first three characters of their postal codes). These sections state:

> (1) A head may refuse to disclose a record where the disclosure could reasonably be expected to,
>
> > (e) endanger the life or physical safety of a law enforcement officer or any other person;
> >
> > (l) facilitate the commission of an unlawful act or hamper the control of crime.

Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context [*Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.)].

Except in the case of section 14(1)(e), where section 14 uses the words "could reasonably be expected to", the institution must provide "detailed and convincing" evidence to establish a "reasonable expectation of harm". Evidence amounting to speculation of possible harm is not sufficient [Order PO-2037, upheld on judicial review in *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, [2003] O.J. No. 2182 (Div. Ct.), *Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)].

In the case of section 14(1)(e), the institution must provide evidence to establish a reasonable basis for believing that endangerment will result from disclosure. In other words, the institution must demonstrate that the reasons for resisting disclosure are not frivolous or exaggerated

[*Ontario (Information and Privacy Commissioner, Inquiry Officer) v. Ontario (Minister of Labour, Office of the Worker Advisor)* (1999), 46 O.R. (3d) 395 (C.A.)]. The Ministry submits that the expectation of harm must be reasonable, but it need not be probable.

It is not sufficient for an institution to take the position that the harms under section 14 are self-evident from the record or that a continuing law enforcement matter constitutes a *per se* fulfilment of the requirements of the exemption [Order PO-2040; *Ontario (Attorney General) v. Fineberg*].

Section 14(1)(e): life or physical safety

The Ministry submits that the publication of the information requested on the OSOR database would be contrary to the intent of the Ontario Legislature, and that OSOR information should be used for public safety purposes only. I have already addressed those arguments under the heading, "General Submissions," above.

With respect to section 14(1)(e), the Ministry argues that there are reasonable concerns that there would be significant safety consequences if the requested information was made available to the public. The Ministry is concerned that the requested information could be integrated with Canada Post FSA maps, allowing the requester to create a geographical map displaying the regions where sex offenders reside. These maps could be published on the internet, and the Ministry argues that they could reasonably be expected to facilitate the identification of the location of sex offender's residence, particularly if used in conjunction with Geographic Information Systems (GIS).

The Ministry argues that disclosure could reasonably be expected to result in the following significant safety consequences:

- citizen vigilantism – violence against publicly identified sex offenders;
- harassment of the identified sex offender that may extend to his/her family and friends;
- victimization resulting from an individual being misidentified as a sex offender, for example, due to lack of name clarity, and changes in residence not reported;
- low sex offender compliance with reporting requirements thereby thwarting the public safety mandates of such programs; and
- recidivism – sex offenders who go underground may lose the support of professionals, family and friends, possibly leading to stress, instability and re-offending.

The Ministry provided a number of news clippings in relation to incidents of violence or harassment of sex offenders in New Brunswick, British Columbia and the United States.

In addition, as noted, the Ministry provided an affidavit sworn by an O.P.P. Superintendent. The Superintendent indicated that the current rate of compliance by sex offenders with the requirements of the registry is 96.78 percent, and, since its inception, the OSOR has shown a consistently higher rate of compliance than comparable registries in the United States. The Superintendent states that Police services in Ontario access the OSOR database approximately six hundred times each day.

The Superintendent believes that the:

> …[H]igh registered sex offender compliance rate in Ontario is largely due to police efforts to closely monitor sex offenders, but also due to the fact that beyond public safety notification provisions in the *Police Services Act*, there is no public notification component similar to many sex offender registries in the United States.
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> …
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> Sex offenders often fear the public more than they fear the police. Public access to information concerning the home addresses of potentially identifiable sex offenders carries the risk that some sex offenders will go "underground" in fear of vigilantism as evidenced by two well-publicized cases in Ontario. Both of these cases involved sex offenders who, following public pressure, relocated to other jurisdictions where new sex crimes were committed.

In addition, the Superintendent believes that, because the OSOR database is updated on a continual basis, multiple requests for the release of the number of sex offenders by the FSA could lead to their identification, based on movement in neighbourhoods, particularly in smaller ones. In turn, the release of requested postal code information in combination with public information sources will increase the risk that the residential address of a registered sex offender will be publicly disclosed, thereby putting the safety of the sex offender in jeopardy.

With respect to recidivism, the Superintendent advises that the ability to quickly identify and locate sex offenders during a critical incident, such as the abduction of a child, will be severely compromised if sex offenders do not comply with the requirement to be registered on the OSOR. For example, when a sex crime occurs, the current address of sex offenders is one of the most valuable categories of information contained in the registry, as police often conduct a radius search focusing on sex offenders known to reside in the area of search. The Superintendent states that:

> [t]he ability to quickly identify an investigative focus can often mean the difference between life and death for a child. In cases involving the non-parental abduction of children, research shows that 44 % of such victims are murdered within one hour after the abduction, 74% … within three hours and 91% … within 24 hours. Additionally, approximately 50% of such abductions resulting in the murder of a child victim occur in close proximity of the child's home.

It appears that the basis of the Ministry's arguments about risks to other individuals arising from non-compliance with the reporting requirements of *Christopher's Law*, and the argument that offenders will go underground, increasing their risk of re-offending, all depend on individuals being concerned that identifiable information about them in the OSOR might be publicly disclosed.

The appellant agrees that he does not wish to see the publication of individual sex offender's addresses, as has happened in the United States.

As previously indicated, in his representations, the appellant provided the numerical breakdown of Ontario's 523 FSAs, and advised that the FSAs have an average population of 24,823. The appellant submits that endangerment of life or safety could only be reasonably expected if the identities of sex offenders were released, and given that the information requested in this appeal could not lead to the identification of a particular sex offender, the Ministry's concern is unfounded.

The appellant states:

> I do not find it plausible that, for example, the information that there are three registered sex offenders in an area of 28,000 people could lead to an individual being accurately identified.

The appellant also submits that in Order PO-2518, I ordered the release of the number of registered sex offenders, not by postal code, but by police jurisdiction. The appellant argues that releasing sex offender data for smaller police jurisdictions is the equivalent of releasing it by FSA's because FSA's are of a roughly similar population to the province's smaller police jurisdictions. For example, the appellant submits that the Cobourg Police Service serves a population of approximately 18,000, which is the same number of individuals living in the area where the FSA is "K9A". In addition, the appellant advises that, as a result of Order PO-2518, sex offender data has already been released for much smaller populations, such as the Walpole Island Police Service, which serves a population of 1,843.

To recap, the Ministry's arguments under section 14(1)(e) are based on: vigilantism; harassment of the offender and his/her family or friends; victimization of those falsely assumed to be offenders; low compliance with the *Christopher's Law* reporting requirements; and recidivism. Each of these arguments depends on identifiability (or, in the case of mistaken identity, an assumption of identifiability). I have already concluded in the discussion of "personal information," above, that it is not reasonable to expect an offender to be identified based on disclosure of the requested information, and in my view, that analysis effectively disposes of the arguments the Ministry makes in relation to section 14(1)(e).

In my view, for this reason, the Ministry's representations, including the affidavit, do not provide a reasonable basis for believing that endangerment will result from disclosure. The possibility of identification, or even presumed identification, of an offender based on the information in the

records, even with cross-referencing, is too remote to meet even the lower evidentiary threshold for section 14(1)(e) established in the *Office of the Worker Advisor* case cited above. I am not requiring that the Ministry demonstrate that harm is probable; there need only be a reasonable basis for believing that harm will result, and it is not established here. The Ministry has not demonstrated that disclosure could reasonably be expected to endanger the life or physical safety of a law enforcement officer or any other person.

With respect to the prospect of FSA maps showing the preponderance of offenders in a given area, I find that, contrary to the Ministry's suggestions, such disclosure could in fact promote public safety by making people aware that, in those areas, their risk of being subject to an attack may be higher. In a similar vein, the Police sometimes publish advisories that an offender has moved into a particular area, as the Ministry attests in its evidence.

For all these reasons, I find that the Ministry has not provided the necessary evidence to establish the application of section 14(1)(e).

Moreover, in Order PO-2518, I ordered the release of the total number of convicted sex offenders residing in each police division in Ontario. As the appellant points out, FSAs have roughly similar populations to the province's smaller police jurisdictions, which can reach as low as 1,843. The appellant also cites several police districts serving populations of 16,000 up to 38,000, which are comparable to the number of individuals living in many FSAs. While 1,843 is a higher number than the smallest number in an FSA, and my conclusion in my findings, above, are not based on this analysis, I note that the Ministry has not provided any evidence that the release of the number of offenders, by police district, has endangered the life or safety of any individual.

To conclude, I find that section 14(1)(e) does not apply to the information at issue in this appeal.

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

The Ministry submits that the release of the requested FSAs contained in the home addresses of registered sex offenders in Ontario may reasonably be expected to facilitate the commission of an illegal act or hamper the control of crime under section 14(1)(l) of the *Act*.

The Ministry submits that its representations, above, regarding section 14(1)(e) also relate to this section, in addition to the following representations.

I have already dealt with most of the Ministry's arguments that pertain to section 14(1)(l) in the context of identifiability in the discussion of the definition of "personal information" and the possible application of section 14(1)(e). My conclusion that it is not reasonable to expect that offenders may be identified from the disclosure of the requested information is sufficient to dispose of those arguments here.

As previously indicated, the Ministry believes that sex offenders' high compliance rate with the OSOR is largely attributed to police efforts, but also to the fact that Ontario does not allow the public access to personal information contained in it, with the exception of the release of information in cases where a Chief of Police or the O.P.P Commissioner determines there is a need to alert the public about a particular sex offender. I have already addressed the fact that this appeal does not relate to a substantive disclosure of the OSOR, but rather, of two small components that do not entail the identification of offenders. I am not persuaded that, based on the evidence, disclosure of the requested information could reasonably be expected to cause offenders to decide not to comply with the reporting requirements of *Christopher's Law*.

The Ministry repeats its arguments to the effect that individuals may not meet the reporting requirements under *Christopher's Law* and may go underground, leading to recidivism, in the context of section 14(1)(l).

> This type of publicity could tempt some Ontario sex offenders to stop meeting their OSOR reporting obligations and go underground…stress and instability are believed to be conditions that increase the risk that a sex offender will re-offend. By releasing the requested OSOR information, the Ministry could in effect be contributing to conditions that may increase the risk of a sex offender reoffending, i.e., committing further sex crimes.

The Ministry submits that the identification of a sex offender and his/her home address could not only increase the risk of re-offending, but also threaten the safety of the sex offender and other individuals residing at the sex offender's home address. These circumstances will facilitate the commission of an unlawful act and hamper the control of crime by the police.

Again, these arguments are based on the possible identification of offenders as a result of disclosure. For the reasons already given, I am not persuaded that disclosure could reasonably be expected to allow offenders to be identified, and for the same reason, disclosure could not reasonably be expected to facilitate the commission of a crime or to hamper crime control.

As well, the appellant submits that similar types of information have been publicly released in the past, such as maps setting out homicide rates, without any noticeable level of social unease. In addition, the appellant states that the consequences envisioned by the Ministry are unfounded, because the information at issue does not contain identifiable personal information. Further, the appellant submits that neither the Ministry nor he are responsible for an individual's decision to break the law and he assumes that the police are given adequate tools to enforce the obligations imposed on sex offenders by the registry.

I note that, in Order PO-2518 I ordered the release of the total number of convicted sex offenders residing in each police division in Ontario, as well as the number of sex offenders by the type of sex offence that was committed. In that appeal the Ministry relied on section 14(1)(l) to deny the request.

In my findings, I stated:

> Though current events have demonstrated that the public identification of sex offenders could potentially lead to the commission of an unlawful act or control of crime, the Ministry has failed to establish a connection between the alleged harm and disclosure of the numeric information at issue. As noted above in the discussion of whether the information responsive to Requests 2 and 3 qualifies as personal information, the evidence does not establish that any individuals are "identifiable" from the requested information. I have also found, in the discussion of section 14(1)(a) above, that the evidence is not sufficient to establish a reasonable expectation of reduced compliance or vigilantism. In my view, such consequences could only be "reasonably expected" to flow from the disclosure of information about identifiable individuals.

Similarly, in this appeal, I find that the Ministry has failed to establish that the release of the requested information, which is not identifiable, could reasonably be expected to facilitate the commission of a crime or hamper the control of crime. Therefore, I find that section 14(1)(l) is not applicable.

Although this is not a basis for my finding concerning this exemption, I also note, as with section 14(1)(e), that the Ministry did not provide any evidence that the release of the information pursuant to Order PO-2518, as described above, caused the commission of a crime or hampered the control of crime.

To conclude, I find that none of the exemptions claimed by the Ministry apply to the information at issue in this appeal.

ORDER:

1. I order the Ministry to disclose to the appellant the record in its entirety by sending a copy to the appellant no later than **August 28, 2009**.

2. In order to verify compliance with this order, I reserve the right to require the Ministry to provide me with a copy of the information disclosed to the appellant, upon request.

Original Signed by: August 7, 2009
John Higgins
Senior Adjudicator