

# INTERPRETATION BULLETIN

## Public Interest Override

This interpretation bulletin explains the public interest override provision, as set out in **section 23** of the *Freedom of Information and Protection of Privacy Act* (FIPPA) and **section 16** of the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA). This document outlines the elements to consider when applying the public interest override to records.

Section 23 of FIPPA states:

An exemption from disclosure of a record under sections 13, 15, 15.1, 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.

Section 16 of MFIPPA states:

An exemption from disclosure of a record under sections 7, 9, 9.1, 10, 11, 13 and 14 does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.



## To which exemptions does the public interest override apply?

The “public interest override” in section 23 of FIPPA and section 16 of MFIPPA provide for the disclosure of records that would otherwise be exempt under other sections of the acts. The following table illustrates which exemptions are subject to the public interest override and which exemptions are not:

Exemptions subject to public interest override	Exemptions not subject to public interest override
Advice and recommendations (s.13 FIPPA /s.7 MFIPPA)	Solicitor-client privilege (s.19 FIPPA /s.12 MFIPPA)
Relations with other governments (s.15 FIPPA /s.9 MFIPPA)	Law enforcement (ss.14, 14.1 & 14.2 FIPPA / ss.8, 8.1 & 8.2 MFIPPA)
Relations with Aboriginal communities (s.15.1 FIPPA /s. 9.1 MFIPPA)	Defence (s.16 FIPPA only)
Third party commercial information (s.17 FIPPA /s.10 MFIPPA)	Cabinet records (s.12 FIPPA only)
Economic interests of an institution (s.18 FIPPA /s.11 MFIPPA)	Closed meetings (s.18.1 FIPPA only)
Danger to safety or health (s. 20 FIPPA /s.13 MFIPPA)	Information soon to be published (s.22 FIPPA /s.15 MFIPPA)
Personal privacy (s.21 FIPPA /s.14 MFIPPA)	Draft by-laws (s.6 MFIPPA only)
Fish and wildlife species at risk (s.21.1 FIPPA only)	

## What are the criteria for the public interest override to apply?

The acts are silent as to who bears the onus of proving that sections 23 FIPPA / 16 MFIPPA apply.<sup>1</sup> This onus cannot be entirely on the appellant who has not had the benefit of reviewing the requested records before making submissions that the public interest override applies. To find otherwise, would be to impose an onus which an appellant could seldom, if ever, meet. Accordingly, the Office of the Information and Privacy Commissioner of Ontario (IPC) will look at the records to decide whether there could be a compelling public interest in disclosure that clearly outweighs the purpose of the exemption.<sup>2</sup>

1 Order [PO-4277](#).

2 Order [P-244](#).

For section 23 of FIPPA and section 16 of MFIPPA to apply, two requirements must be met<sup>3</sup>:

- there must be a compelling public interest in disclosure of the records; and
- this compelling public interest must clearly outweigh the purpose of the exemption.

## What is a “compelling public interest”?

In deciding whether there is a “public interest” in disclosure of the record, the first question to ask is if there is a relationship between the record and the acts’ central purpose of providing information about the operations of government.<sup>4</sup> In earlier orders, the IPC has stated that to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing or educating the citizenry about the activities of their government or its agencies, adding in some way to the information the public has to make good use of the means of voicing public opinion or to make political choices.<sup>5</sup>

Releasing government-held information to the public can help inform or educate the public about governmental activities.<sup>6</sup>

A “public interest” does not exist where the interests being advanced are essentially private in nature.<sup>7</sup> However, if a private interest raises issues of more general application, the IPC may find that there is a public interest in disclosure.<sup>8</sup>

A public interest is not automatically found because a requester is a member of the media.<sup>9</sup>

Moreover, in order for a public interest to meet the criteria of section 23 of FIPPA and section 16 of MFIPPA, it must be compelling. The IPC has defined the word “compelling” as “rousing strong interest or attention.”<sup>10</sup>

The IPC must also look at any public interest in **not** disclosing the record.<sup>11</sup> A public interest in the non-disclosure of the record may bring the public interest in disclosure below the level of “compelling.”<sup>12</sup>

3 Order [PO-4277](#).

4 Orders [P-984](#) and [PO-2607](#).

5 Orders [P-984](#) and [PO-2556](#).

6 Orders [P-984](#) and [PO-2556](#).

7 Orders [P-12](#), [P-347](#) and [P-1439](#).

8 Order [MO-1564](#).

9 Orders [M-773](#) and [M-1074](#).

10 Order [P-984](#).

11 [Ontario Hydro v. Mitchinson, \[1996\] O.J. No. 4636 \(Div. Ct.\)](#).

12 Orders [PO-2072-F](#), [PO-2098-R](#) and [PO-3197](#).

## Examples of “compelling public interest”

For example, the IPC found that certain parts of records about the death of a worker at one of the company’s facilities were of compelling public interest.<sup>13</sup> Release of this information would help inform the public about what the Workplace Safety and Insurance Board had done about the health and safety conditions at the company. Release of this information would also help to inform the public debate about the sufficiency of current health and safety laws.<sup>14</sup>

Other example cases where a compelling public interest has been found to exist, include the following:

- the records deal with the economic impact of Quebec separation;<sup>15</sup>
- the integrity of the criminal justice system is in question;<sup>16</sup>
- there are public safety issues relating to the operation of nuclear facilities;<sup>17</sup>
- disclosure would provide information about the safe operation of petrochemical facilities<sup>18</sup> or the province’s ability to prepare for a nuclear emergency;<sup>19</sup>
- the records include information about contributions to municipal election campaigns;<sup>20</sup>
- the records show how much Ontarians are paying for electricity produced by a nuclear power station over a 49-year period;<sup>21</sup>
- the records show the salaries of top administrators employed by a municipal institution;<sup>22</sup>
- the records show whether or not the supervision of a probationer convicted of assault was adequate, given that he subsequently was convicted of murdering several individuals<sup>23</sup> and;
- disclosure would provide information to the public about the actions of the Workplace Safety and Insurance Board in relation to the health and safety conditions at a company.<sup>24</sup>

13 Order [PO-4416](#).

14 Order [PO-4416](#).

15 Order [P-1398](#), upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)*, [1999] O.J. No. 484 (C.A.).

16 Order [PO-1779](#).

17 Order [P-1190](#), upheld on judicial review in *Ontario Hydro v. Ontario (Information and Privacy Commissioner)*, [1996] O.J. No. 4636 (Div. Ct.), leave to appeal refused [1997] O.J. No. 694 (C.A.), Order [PO-1805](#).

18 Order [P-1175](#).

19 Order [P-901](#).

20 *Gombu v. Ontario (Assistant Information and Privacy Commissioner) (2002)*, 59 O.R. (3d) 773.

21 Reconsideration Order [PO-4044-R](#).

22 Order [MO-3844](#) and Interim Order [MO-3684-I](#).

23 Orders [PO-4375](#) and [PO-4416](#).

24 Order [PO-4416](#).

A compelling public interest has been found **not** to exist where, for example:

- another public process or forum exists to address public interest considerations;<sup>25</sup>
- a large amount of information has already been disclosed and this is enough to address any public interest considerations;<sup>26</sup>
- a court process provides an alternative disclosure mechanism, and the reason for the request is to obtain records for a civil or criminal proceeding;<sup>27</sup>
- there has already been wide public coverage or debate of the issue, and the records would not provide more information on the matter;<sup>28</sup> and,
- the records do not respond to the applicable public interest raised by appellant.<sup>29</sup>

## What is meant by "outweighs the purpose of the exemption"?

The presence of a compelling public interest is not enough to justify disclosure under section 23 of FIPPA and section 16 of MFIPPA. This interest must also **clearly** outweigh the purpose of the exemption in the specific circumstances.

An important factor in balancing a compelling public interest in disclosure against the purpose of the exemption is the extent to which denying access to the information is consistent with the purpose of the exemption.<sup>30</sup>

For example, the IPC found that any public interest in disclosure of information related to the demand for cannabis in the early stages of legalization did not outweigh the intent of FIPPA section 18(1) that protects the economic interests of an institution.<sup>31</sup> The IPC found that the public interest in reducing negative economic effects to Ontario resulting from the release of highly-detailed and technical information was more important than the informed public discussion that could result.<sup>32</sup> Accordingly, the IPC found that the override did not apply and did not order the institution to release the information.

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25 Orders [P-123/124](#), [P-391](#) and [M-539](#).

26 Orders [P-532](#), [P-568](#), [PO-2626](#), [PO-2472](#) and [PO-2614](#).

27 Orders [M-249](#) and [M-317](#).

28 Order [P-613](#).

29 Orders [MO-1994](#) and [PO-2607](#).

30 Order [P-1398](#), upheld on judicial review in [Ontario v. Higgins, 1999 CanLII 1104 \(ONCA\), 118 OAC 108](#); leave to appeal to the Supreme Court of Canada denied, (January 20, 2000) Doc. 27191.

31 Order [PO-4277](#).

32 Order [PO-4277](#).

On the other hand, the IPC found a compelling public interest in disclosing the probation file of a high-profile criminal for the public to be able to scrutinize what government knew about the probationer at the time of his first conviction, whether correctional agencies had acted appropriately in assessing the probationer's level of risk, whether the level of supervision was adequate based on what government knew, and whether they should have apprehended him sooner. This compelling public interest clearly outweighed the need to protect the personal information of a killer who went on to commit eight murders.<sup>33</sup>

## What about personal information?

Where personal information is at issue, there is often a public interest in keeping this information confidential. Individuals have privacy interests in their personal information, even where that information resides with institutions.<sup>34</sup>

Where release of personal information is being contemplated under the public interest override, the individual whose personal information is at issue must first be notified.<sup>35</sup> This allows them an opportunity to make representations.<sup>36</sup>

For additional information, please see the [public interest disclosure fact sheet](#).

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33 Order [PO-4375](#).

34 Order [PO-4375](#).

35 Order [MO-3295](#).

36 Order [MO-3295](#).