



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER MO-2292

Appeal MA-060173-1

Ottawa Police Services Board



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NATURE OF THE APPEAL:

The Ottawa Police Services Board (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) from the father of a sixteen year old individual (the deceased) who died as a result of a motor vehicle accident.

The request was for:

a copy of the Technical Traffic Collision Investigation (TTCI) Report, the full occurrence report with respect to the incident, including any witness statements and any handwritten notes made by [six named police officers] and any other officers involved during the course of the investigation.

The requester enclosed a copy of the Motor Vehicle Accident (MVA) Report prepared by the Police with his request letter.

The Police notified three witnesses to the accident, along with the owner of the motorcycle driven by the deceased seeking their views on the disclosure of their contact information. Two of the witnesses responded and consented to their contact information being disclosed.

The Police issued a decision granting partial access to the responsive records, which included access to the contact information of the two consenting witnesses. Access was denied to most of the other information in the records pursuant to section 38(a) (right of access to one's own personal information), in conjunction with section 8(1)(l) (facilitate commission of unlawful act); and sections 14(1) and 38(b) (personal privacy), in conjunction with the presumptions in sections 14(3)(a) (medical history) and 14(3)(b) (investigation into violation of law) of the *Act*.

In their decision letter, the Police also informed the requester that Bill 190 had been introduced in the Legislature. The Police advised that once this Bill was passed, the requester could obtain further access to the records. Bill 190 was to add the following provision to the *Act*:

14(4) ...a disclosure (of personal information) does not constitute an unjustified invasion of personal privacy if it,

(c) discloses personal information about a deceased individual to the spouse or a close relative of the deceased individual, and the head is satisfied that, in the circumstances, the disclosure is desirable for compassionate reasons.

The requester (now the appellant) appealed the decision of the Police respecting access.

After the appeal was filed, Bill 190 received Royal Assent. As a result of the passage of Bill 190, which added section 14(4)(c) to the *Act*, the Police issued a new decision letter granting the appellant access to the personal information of the deceased contained in three pages of the records. Access was denied to the remainder of the records, including the personal information of the owner of the motorcycle driven by the deceased, the three witnesses and the other driver involved in the accident (the affected person). Also withheld was information relating to the

vehicles involved, as well as the police operational codes and information listed in the officer's notes.

Access to the undisclosed portions of the responsive records was again denied on the basis that it was exempt from disclosure under section 38(a), read in conjunction with the law enforcement exemption in section 8(1)(l), as well as section 38(b) of the *Act*, read in conjunction with section 14(3)(b). As a result of this further disclosure by the Police the application of the presumption in section 14(3)(a) was no longer at issue. Subsequently, the Police received the consent of the owner of the motorcycle driven by the deceased. The Police issued a revised decision letter disclosing some further portions of the records as a result.

The appellant advised this office that he wished to continue his appeal of the Police's decision to deny access to the remaining records at issue and that he wished to proceed to the adjudication stage of the appeals process, bypassing the mediation stage of the appeal.

The file was transferred to me to conduct the inquiry. I sent a Notice of Inquiry, outlining the facts and issues in this appeal, to the Police and the affected person. I received representations from both the Police and the affected person. I sent these representations in their entirety, along with a Notice of Inquiry, to the appellant and received representations in response.

The appellant indicated in his representations that he was not seeking access to information for which the exemption at section 38(a) in conjunction with section 8(1)(l) was claimed; therefore, the severed police operational codes and information at pages 54, 58, 59, 61 to 63 of Record 8 are no longer at issue.

I sent a copy of the appellant's representations to the Police and sought reply representations from the Police. I also sought the representations of the affected person and the three witnesses (witnesses #1, 2 and 3) to the accident concerning the specific application of section 14(4)(c) to the records. I received representations in response from the Police and the affected person only. I then sent a copy of these representations of the Police and the affected person to the appellant and sought surreply representations from the appellant on the application of section 14(4)(c). I received representations from the appellant in response.

Subsequently I sought additional representations from the Police concerning the application of section 14(4)(c) to the records in light of the recent orders on that issue, Orders MO-2237 and MO-2245. The Police did not provide additional representations in response.

RECORDS:

There are 64 pages of records at issue in this appeal as described in the following Index:

INDEX OF RECORDS

<u>Record #</u>	<u>Description of Record(s)</u>	<u>Police Page Number(s)</u>	<u>Released by the Police?</u>
1	Three witness statements	1 - 6	Not Released
2	Affected person's statement	7 - 9	Not Released
3	One safety checklist	26 - 27	Not Released
4	A diagram of the scene of the accident	12	Partially Released
5	Two Vehicle Examination reports	13 - 20	Not Released
6	An On-Scene Measurement Record	21 - 22	Partially Released
7	One General Occurrence Report	28 - 53	Partially Released
8	Handwritten notes of four police officers	54 to 64	Partially Released

The Police identified Records 4, 5 and 6 and pages 38 to 41, 45 to 46 of Record 8 as comprising the TICI, because they were prepared by the collision investigator during the course of his investigation into this incident. They contain such information as speed calculations, scene descriptions, diagrams and interviews with witnesses and involved parties.

The Police have claimed the application of sections 38(b) or 14(1), read with section 14(3)(b), for all of the records. The appellant has claimed the provisions set out in sections 14(2)(d) and 14(4)(c) in support of the release of the personal information in the records.

DISCUSSION:

PERSONAL INFORMATION

In order to determine which sections of the *Act* may apply, it is necessary to decide whether the records contain "personal information" and, if so, to whom it relates. That term is defined in section 2(1). 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].

Only records containing the personal information of other individuals can be exempt under section 38(b) or 14(1).

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 Police submit that the records contain personal information in accordance with the following paragraphs of the definition of personal information in section 2(1):

“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,
- (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;

The Police submit that the information contained in the records is the personal information of other individuals and the appellant. In particular, they submit that the statements made by the other individuals are considered to be the mixed personal information of the appellant and/or the deceased, the individuals who supplied the statements and other individuals referred to in the statements.

The affected person submits that:

...it is clear that the information which the appellant is seeking to be produced is personal information of the affected [person]. Not only is it about the affected [person] and [their] property, the affected [person] will be easily identified if the information is disclosed.

In response to these representations, the appellant only provided representations on this issue with respect to the TTCI. He states:

It cannot be conceived ...how much of the information contained in the TTCI report pertaining to the accident and how it occurred could be considered personal information. It is not apparent how any of the listed inclusions enumerated under section 2(1) of the *Act* would apply. Beyond the inclusions, by common sense, it does not seem that much of the information in the TTCI report could be considered to be information "about" an identifiable individual.

In reply, the Police state:

The TTCI certainly does contain personal information as defined in Section 2 of the *Act* as there are statements from individuals who were interviewed. These statements are recorded by the investigating officer and form part of his report. These statements contain views or opinions of an individual about another individual(s) and therefore qualify for exemption under [paragraph (h) of the definition of personal information in section 2(1)].

Analysis/Findings

I find that portions of several records remaining at issue do not contain any personal information, but rather only information concerning the vehicles involved in the accident.

I find that Record 3 (one vehicle safety checklist) and Record 5 (two vehicle examination reports), do not contain personal information except for the vehicle registration number and license plate number of the vehicle that hit the motorcycle driven by the deceased. The Police have already released these numbers in the MVA Report concerning the accident in issue. The appellant has provided me with a copy of this Report. The MVA Report contains these numbers along with other information concerning the accident. In my view, it would be absurd to withhold this personal information in Records 3 and 5, and since they are not otherwise exempt, I will order them to be disclosed in their entirety.

For similar reasons, I find that the undisclosed information from Record 4, a diagram of the accident scene, and Record 6, an On-Scene Measurement Record, also do not contain personal information. Furthermore, I find that the undisclosed information at pages 55, 58 and 60 and at part of page 57 of Record 8, which is contained in the handwritten notes of four police officers, is not personal information. I will also order these records or parts of records to be disclosed.

I find that page 1 of Record 1 contains the personal information of the deceased and another identifiable individual, witness #1. This record does not contain the personal information of the appellant. The personal information in Record 1 includes witness #1's address and telephone number (paragraph (d)), his name along with other personal information about witness #1 (paragraph (h)) and the views of witness #1 about the deceased (paragraph (g) of the definition of "personal information" in section 2(1)).

The remaining records and portions of records contain the personal information of the appellant, the deceased and other identifiable individuals. This personal information includes their names along with other personal information about them (paragraph (h)), the views of one individual about another (paragraph (g)), their addresses and telephone numbers (paragraph (d)), their sex and ages (paragraph (a)), their medical history (paragraph (b)), identifying numbers (driver's license and license plate numbers) (paragraph (c)), and their employment history (paragraph (b) of the definition of "personal information" in section 2(1)).

In conclusion, the records that contain personal information are Records 1, 2, 7 and pages 54, 56, 57, 61, 63 and 64 of Record 8. All of these records or portions of records contain the personal information of the appellant, the deceased and other identifiable individuals, except for page 1 of Record 1. Page 1 of Record 1 is the statement of witness #1 and does not contain the personal information of the appellant, but does contain the personal information of the deceased and other identifiable individuals.

PERSONAL PRIVACY

Having found that Records 1, 2, 7 and pages 54, 56, 57, 61, 63 and 64 of Record 8 contain the personal information of the appellant, the deceased and other identifiable individuals, as defined in section 2(1) of the *Act*, I will now consider whether this information is exempt from disclosure under section 38(b), except for the statement of witness #1 at page 1 of Record 1. I will consider whether witness #1's statement in Record 1 is exempt from disclosure under section 14(1), as it does not contain the personal information of the appellant.

Section 36(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 38 provides a number of exemptions from this right.

Under section 38(b), where a record contains personal information of both the requester and another individual, and disclosure of the information would constitute an "unjustified invasion" of the other individual's personal privacy, the institution may refuse to disclose that information to the requester.

If the information falls within the scope of section 38(b), that does not end the matter. Despite this finding, the institution may exercise its discretion to disclose the information to the requester. This involves a weighing of the requester's right of access to his or her own personal information against the other individual's right to protection of their privacy.

Under section 14(1), where a record contains personal information only of an individual other than the requester, the institution must refuse to disclose that information unless disclosure would not constitute an “unjustified invasion of personal privacy”.

In both these situations, sections 14(1) to (4) provide guidance in determining if disclosure of personal information would result in an unjustified invasion of the personal privacy of the individual to whom the information relates. If the information fits within any of paragraphs (a) to (e) of section 14(1), disclosure is not an unjustified invasion of personal privacy and the information is not exempt under sections 38(b) or 14(1). Section 14(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy. Section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy. Section 14(4) identifies information whose disclosure is not an unjustified invasion of personal privacy.

I will deal with the relevant provisions of each of these subsections of section 14 separately.

Section 14(1)(a)

It appears that the exception in section 14(1)(a) may apply to some of the information at issue. Section 14(1)(a) provides that:

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

upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access;

Record 1 consists of the three witness statements of witnesses # 1, 2 and 3. The Police sought the consent of these three individuals to release their contact information. Witnesses #2 and 3, whose statements are on pages 2 to 6 of Record 1, consented in writing to the release of this information and witness #1, whose statement is on page 1 of Record 1, did not respond. Record 7 is the General Occurrence Report that contains the details of the police investigation into the accident. Because of the prior written consent of witnesses #2 and 3, I find that their names and addresses in Records 1 and 7 are not exempt from disclosure under section 38(b) by reason of the application of section 14(1)(a) and I will order it disclosed.

Section 14(3)(b)

The Police have claimed the application of the presumption in section 14(3)(b) for all of the personal information in the records at issue. Section 14(3)(b) reads:

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

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

The Police submit that:

In relation to section 14(3)(b) the information was used by the Collision Investigator to determine if an offence under the *Highway Traffic Act* or Criminal Code of Canada had been committed. The information contained in these records was used to investigate this motor vehicle collision and prosecute any offender(s) should charges be warranted. That fact that after the investigation was completed it was determined that no charges were warranted does not mitigate the fact that the information was used for this purpose nor does not negate the purpose of Section 14(3)(b).

The appellant states that:

With respect to section 14(3)(b) this is a section that presents great difficulty with respect to any attempt to apply this section, since it is difficult to define where an investigation into a possible violation of the law begins and ends. In this case, the essence of the police investigation was a collision investigation, not an investigation into a violation of the law per se. The police are required to investigate collisions pursuant to the *Highway Traffic Act*, and the purpose of such an investigation does not necessarily involve an investigation into a possible violation of the law. No charges were ever laid, either under the Criminal Code or any provincial statute. Given the volume of records that have been disclosed to date, and the submissions of the Ottawa Police Service, it is clear that the reason for refusing to disclose is rooted in the desire of the police to protect the privacy interests of individuals who choose to provide information to the Police as opposed to relying on section 14(3)(b) per se. It is therefore submitted that none of the exceptions under section 14(3) apply in this instance.

The affected person opposes disclosure of his/her personal information and states that:

When one considers the information which has been withheld by the Ottawa Police Service to date, it is clear that it includes detailed statements put forward by the affected [person] under compulsion of law. Other documents in which the affected [person] has a personal interest are also included in these records and, therefore, should not be disclosed to the appellant...

[D]isclosure of this information will, most definitely, shake the public confidence in the operation of the Ottawa Police Force and, for that matter, the statute

[*Highway Traffic Act*] under which the affected [person] was obligated to provide his/her statement and related information.

Analysis/Findings under section 14(3)(b)

I agree with the Police that the personal information at issue in Records 1, 2, 7 and pages 54, 56, 57, 61, 63 and 64 of Record 8 was compiled by the Police following a fatal motor vehicle accident in order determine if an offence under the *Highway Traffic Act* or Criminal Code of Canada had been committed. Therefore, section 14(3)(b) applies to this information.

Even though no criminal proceedings were commenced against any individuals, section 14(3)(b) still applies. The presumption in section 14(3)(b) only requires that there be an investigation into a possible violation of law [Order P-242].

As paragraph (b) of section 14(3) applies, disclosure is presumed to be an unjustified invasion of personal privacy under sections 38(b) and 14(1). Once a presumed unjustified invasion of personal privacy is established under section 14(3), it cannot be rebutted by one or more factors or circumstances under section 14(2) [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767].

A presumed unjustified invasion of personal privacy under section 14(3) can only be overcome if section 14(4) or the “public interest override” at section 16 applies. [*John Doe*, cited above]. The appellant has not raised the application of section 16 in this appeal, however, section 14(4)(c) may apply to the information at issue.

Section 14(4)(c)

Section 14(4)(c) reads:

Despite subsection (3), a disclosure does not constitute an unjustified invasion of personal privacy if it,

discloses personal information about a deceased individual to the spouse or a close relative of the deceased individual and the head is satisfied that, in the circumstances, the disclosure is desirable for compassionate reasons [emphasis added].

Section 39(1) confers on the Commissioner the power to review “any decision of the head” on appeal. This includes a decision under section 14(4)(c), which depends on the head being “satisfied that, in the circumstances, the disclosure is desirable for compassionate purposes.” If the Commissioner disagrees with the head’s assessment under this section, the Commissioner is empowered to make a different determination.

A finding that the exception in section 14(4)(c) applies to some or all of this personal information means that disclosure of that information would not be an unjustified invasion of personal privacy. Accordingly, where this provision applies, the information is not exempt under section 38(b) or section 14(1) [see Orders MO-2237, MO-2245].

The appellant submits that section 14(4)(c) applies in this appeal to allow the disclosure of the personal information of his deceased son. However, I will not consider whether section 14(4)(c) applies to the following portions of Records 1, 2, 7 and 8 which does not contain the personal information of the deceased:

Record 1

- the name, address and phone number of the witness #1 at page 1.

As the presumption in section 14(3)(b) applies to this information in Record 1, disclosure would constitute an unjustified invasion of personal privacy under section 14(1).

Record 2

- the name, address and phone number of the affected person.

This record is the statement of the affected person, who was the driver of the vehicle that struck the deceased. From the MVA Report the appellant is already aware of the affected person's contact information. This contact information should therefore be found not to be exempt under section 38(b), because to find otherwise would be absurd and inconsistent with the purpose of the exemption [Orders M-444, MO-1323].

Record 7

- the name, address, driver's license number and date of birth of the affected person's relative;
- the place of birth, occupation, driver's license number, race, marital status and physical description of the owner of the motorcycle driven by the deceased;
- the race and dates of birth of witnesses #2 and 3;
- the race and year of birth of the Coroner who examined the deceased's body; and,

- the sex, driver's licence number, contact information and date of birth of the witness who made a statement to the Police on page 1 of Record 1.

Record 8

- addresses and dates of birth of the paramedics;
- the occupation, place of work and age of the owner of the motorcycle; and,
- the dates of birth of witnesses #2 and 3.

The presumption in section 14(3)(b) applies to this information in Records 7 and 8 that is not the personal information of the deceased. Therefore, subject to my consideration of the Police's exercise of discretion, disclosure of this information in Records 7 and 8 would constitute an unjustified invasion of the personal privacy of identifiable individuals under section 38(b).

I will now determine whether section 14(4)(c) permits further disclosure of the deceased's personal information (which is co-mingled with the information of the appellant, the affected person, the three witnesses and/or other identifiable individuals) in Records 1, 2, 7 and pages 54, 56, 57, 61, 63 and 64 of Record 8.

Scope of section 14(4)(c)

In Order MO-2237, Assistant Commissioner Brian Beamish determined how the exception in section 14(4)(c) should be applied to information that is clearly the personal information of the deceased individual, but, at the same time, is also the personal information of another individual or individuals. He stated that:

The first question to address here is whether the reference to "personal information about a deceased individual" can include information that also qualifies as that of another individual. In my view, this question should be answered in the affirmative. The circumstances of an individual's death, particularly one that is followed by a police or coroner's investigation, are likely to involve discussions with other individuals that will entail, to a greater or lesser extent, the collection and recording of those individuals' personal information. In my view, an interpretation of this section that excludes any information of a deceased individual on the basis that it also qualifies as the personal information of another individual would be inconsistent with the definition of "personal information", set out above, since the information would clearly qualify as recorded information "about" the deceased individual. It would also frustrate the

obvious legislative intent behind section 14(4)(c), of assisting relatives in coming to terms with the death of a loved one.

In Order MO-2237, Assistant Commissioner Beamish determined that the application of section 14(4)(c) requires a consideration of the following questions, all of which must be answered in the affirmative in order for the section to apply:

1. Do the records contain the personal information of a deceased individual?
2. Is the requester a spouse or “close relative” of the deceased individual?
3. Is the disclosure of the personal information of the deceased individual desirable for compassionate reasons, in the circumstances of the request?

Step 1 – Personal Information of the Deceased

The undisclosed information at issue in Records 1, 2, 7 and pages 54, 56, 57, 61, 63 and 64 of Record 8 contains the personal information of the deceased which is comingled with the personal information of the appellant, the affected person, the three witnesses and/or other identifiable individuals. I find that this requirement for the application of section 14(4)(c) is satisfied.

Step 2 – Spouse or “Close Relative”

“Close Relative” is defined in section 2(1) of the *Act*:

“close relative” means a parent, child, grandparent, grandchild, brother, sister, uncle, aunt, nephew or niece, whether related by blood or adoption;

I am satisfied that the appellant is the parent of the deceased individual whose personal information is contained in the records at issue, and therefore he is a “close relative”. I find that this requirement for the application of section 14(4)(c) is satisfied.

Step 3– Desirable for Compassionate Reasons

Representations

The Police submit that:

Although [the appellant’s] primary concern is to know every detail possible it does not give him the absolute right to information relating to other individuals and that would be an unjustified invasion of their privacy. Although this is a tragic event and it is understandable that [the appellant] would want all the information we must balance his right of access with the privacy rights of the individuals involved.

During the process we did contact affected parties to seek representation on disclosure of their information. Although it would be helpful for [the appellant] to have access to this information so he could better understand the entire picture, we must still abide by the requirements of the *Act* and protect the privacy of the affected parties.

We therefore feel that the information to which access was denied does fall under the scope of sections 14(1)(f) and 14(3)(b) and our decision to deny access to this information should be upheld.

The affected person objects to the disclosure of their personal information and submits that:

As I am sure you understand, this was a very serious motor vehicle accident. The [affected person] continues to suffer on an emotional basis for which [the affected person] is receiving counseling. In this regard, any disclosure of further materials relating to this accident and, in particular, information relating to his/her participation therein, will most definitely result in an aggravation of his/her symptoms.

In our opinion, it is clear that the information which the appellant is seeking to be produced is personal information of the [affected person]. Not only is it about the [affected person] and his/her property, the [affected person] will be easily identified if the information is disclosed.

When one considers the information which has been withheld by the Ottawa Police Service to date, it is clear that it includes detailed statements put forward by the [affected person] under compulsion of law. Other documents in which the [affected person] has a personal interest are also included in these records and, therefore, should not be disclosed to the [appellant].

In addition to the above, it is clear that the information which the appellant is seeking contains personal opinions or views of the [affected person] which, unfortunately, may be misinterpreted by the appellant.

In response, the appellant submits that:

Without the information that is being withheld, the [appellant and his wife] are effectively denied any insight whatsoever as to how or why their son died in such a young age. It is trite to say that, for a parent, the untimely death of your child at a young age is a horrific experience. It is an event that is incomprehensible. Naturally, as part of the grieving process it is natural for the parents of the deceased child to have an unrelenting desire to have access to all information possible that may help them to understand the incomprehensible in events that caused their child to die.

It is undeniable that information that is being withheld from these records can help the [appellant and his wife] understand how and why their son died which will help them with the grieving process...

This exception should not be narrowly construed. The Legislature chose to use the word "desirable". If the Legislature wished to narrow the application of the provision it could have been written to mandate the disclosure be "necessary" for compassionate reasons.

A principled approach to this provision avoids absurd results. If this appeal is ultimately dismissed, if the [appellant and his wife] so choose, they may start a civil action, not knowing whether or not it has merit, against the driver of the vehicle that struck the deceased. Through the discovery process in such an action they will ultimately obtain the information that they are seeking. It is absurd that the parents of a deceased child has to go to the time, effort, and expense of civil litigation in order to get answers to their questions about how and why their son died and to promptly grieve their loss. It is desirable for compassionate reasons parents of the deceased child's obtain answers to their questions through the freedom of information process without having to resort to civil litigation.

Analysis/Findings re: Section 14(4)(c)

In Order MO-2237 Assistant Commissioner Beamish determined that:

[S]ection 14(4)(c) raises an issue about the interpretation of the words "desirable for compassionate reasons"... The Concise Oxford Dictionary, Eighth Edition, defines "compassionate" as follows: "adj. sympathetic, pitying." Compassion is defined in the Concise Oxford Dictionary, Eighth Edition, as follows: "n. pity inclining one to help or be merciful."

I accept these definitions as evidence of the plain and ordinary meaning of the word "compassionate" and adopt it for the purposes of this appeal.

...I have concluded that by using the words "in the circumstances" the Legislature intended that a broad and all encompassing approach be taken to the consideration by this office of whether or not disclosure is "desirable for compassionate reasons." In my view, by enacting this amendment to the *Act*, the Legislature intended to address an identified gap in the access to information legislation and increase the amount of information being provided to bereaved family members. It is recognition that, for surviving family members, greater knowledge of the circumstances of their loved one's death is by its very nature compassionate.

In Order MO-2245, Assistant Commissioner Beamish determined that:

By means of section 14(4)(c), the Legislature has recognized a group of individuals who have a special interest in gaining access to the personal interest of a deceased individual. The intent of the section is to allow for the disclosure of information to family members even though that information would not have been disclosable to them during the life of the individual. In my view, it is a tacit recognition by the Legislature that, after the death of an individual, it is that person's spouse or close relatives who are best able to act in their "best interests" with regard to whether or not particular kinds of personal information would assist them in the grieving process. The task of the institution, and this office on appeal, is to determine whether, "in the circumstances, disclosure is desirable for compassionate reasons."

I agree with and adopt the analysis of Assistant Commissioner Beamish in Orders MO-2237 and MO-2245 that I have just reproduced.

I will now deal with the information that may be subject to the exception in section 14(4)(c) in each record separately.

Record 1 consists of three witness statements. I have dealt above with the contact information in each statement. I find that disclosure of the remaining information in the three witness statements that comprise Record 1 is "desirable for compassionate reasons" within the meaning of section 14(4)(c), as it would provide the appellant with greater knowledge of the circumstances surrounding his son's death. Disclosure of this information is not an unjustified invasion of personal privacy under section 38(b) or 14(1), and as it is not otherwise exempt, I will order it disclosed.

Record 2 is the statement of the affected person, who was the driver of the vehicle that struck the deceased. I find that disclosure of this statement is "desirable for compassionate reasons" within the meaning of section 14(4)(c), as it would provide the appellant with greater knowledge of the circumstances surrounding his son's death. The affected person is concerned that disclosure of the information relating to his/her participation in the accident will result in an aggravation of his/her emotional symptoms. The affected person has not provided any specific or corroborative evidence as to why the provision of this statement, or of any of the other records at issue, to the appellant will aggravate the affected person's emotional symptoms. Nor has the affected person directed me to anything in particular in the records that disclosure of which would lead to such a result. Therefore, I find that section 14(4)(c) applies to the personal information at issue in Record 2. Disclosure of this information is not an unjustified invasion of personal privacy and this information is not exempt under section 38(b). As it is not otherwise exempt, I will order this record disclosed.

Record 7 is a General Occurrence Report concerning the accident and contains the investigating officers' findings, along with a summary of their interviews with the witnesses, the affected person and the other individuals who were involved in the investigation of this accident.

Portions of this record have already been disclosed by the Police. In addition, some of the undisclosed personal information in this record is already contained in the MVA Report provided to me by the appellant. I find that section 14(4)(c) applies to the remaining undisclosed information in Record 7. Disclosure of this information will provide the appellant with greater knowledge of the circumstances of his son's death and I will order it disclosed.

Record 8 consists of the police officers' handwritten notes of the accident investigation. Pages 54, 56, 57, 61, 63 and 64 of Record 8 are at issue.

Portions of this record have already been disclosed by the Police. I find that section 14(4)(c) applies to the remaining undisclosed information in this record that contains the deceased's personal information. Disclosure of this information would provide the appellant with greater knowledge of the circumstances of his son's death and I will order it disclosed.

In conclusion, I find that section 14(4)(c) applies to the portions of Records 1, 2, 7 and 8 that contain the deceased's personal information and I will order that information disclosed.

EXERCISE OF DISCRETION

I will now consider whether the Police exercised their discretion under section 38(b) in a proper manner concerning the information in Records 7 and 8 that I have decided should be withheld above by reason of the application of section 14(3)(b), which consists primarily of the driver's license numbers, dates of birth, addresses and names of individuals who were involved in the investigation of the accident. I will not consider whether the Police exercised their discretion in a proper manner with respect to the contact information in Record 1, page 1, as this witness statement does not contain the personal information of the appellant and is not subject to the discretionary personal privacy exemption in section 38(b).

The section 38(b) exemption is discretionary, and permits an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

In addition, the Commissioner may find that the institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose
- it takes into account irrelevant considerations
- it fails to take into account relevant considerations

In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations [Order MO-1573]. This office may not, however, substitute its own discretion for that of the institution [section 43(2)].

Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant [Orders P-344, MO-1573]:

- the purposes of the *Act*, including the principles that
 - information should be available to the public
 - individuals should have a right of access to their own personal information
 - exemptions from the right of access should be limited and specific
 - the privacy of individuals should be protected
- the wording of the exemption and the interests it seeks to protect
- whether the requester is seeking his or her own personal information
- whether the requester has a sympathetic or compelling need to receive the information
- whether the requester is an individual or an organization
- the relationship between the requester and any affected persons
- whether disclosure will increase public confidence in the operation of the institution
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person
- the age of the information
- the historic practice of the institution with respect to similar information

The Police submit that:

The following factors were considered when we exercised our discretion to deny the appellant access to the information.

1. The privacy rights of the other individuals referred to in the records.
2. The exemptions in section 14 that serve to protect the other individuals.
3. The right of access of the appellant to this information so that he could better deal with the tragic death of his son.
4. The information was collected for a law enforcement purpose in order for the police to conduct investigations under the Criminal Code of Canada and the *Highway Traffic Act*.
5. The information is considered to be not only the personal information of the appellant and/or his son, but other individuals and should be protected.
6. Police investigations into the conduct of citizens are confidential and privileged to the investigative body in order to maintain fairness and a presumption of innocence.

The circumstances of the incident were looked at to see if the right of access to the appellant outweighed the privacy rights of the other individuals. Disclosure of a record is in effect disclosure to the world and not just the appellant. We therefore feel that the privacy rights of the other individuals outweighs the appellant's right to access.

The affected person submits that the Police exercised their discretion in a proper manner.

In response, the appellant submits that:

It is submitted that the factors that should be given the most significant consideration here are that information should be made available to the public, individuals should have a right of access to their own personal information, exemptions from the right of access should be limited and specific, that [the appellant] is an individual, and most of all that the need of [the appellant] to know all possible details as to the circumstances surrounding his son's death is a sympathetic and compelling need to receive the information.

Analysis/Findings

I find that the Police exercised their discretion in a proper manner, taking into account relevant considerations and not taking into account irrelevant considerations in not disclosing the addresses, dates of birth, phone numbers, driver's license numbers and other identifying personal information of identifiable individuals. The appellant is not otherwise aware of this information, which is significant and sensitive personal information of identifiable individuals other than the appellant and the deceased. Therefore, I uphold the Police's exercise of discretion concerning this information.

ORDER:

1. I order the Police to disclose to the appellant all of the records except for those portions that contain the identifying personal information of individuals other than the deceased which is not already known to the appellant or that contain the police operational codes or information. For the sake of clarity, I have highlighted the portions of these records that should *not* be disclosed in the duplicate copy of the records enclosed with this Order. The information that is not highlighted is to be disclosed by **May 19, 2008 but not before May 14, 2008**.

2. In order to verify compliance with provision 1 of this Order, I reserve the right to require the Police to provide me with a copy of the records disclosed to the appellant.

Original signed by: _____
Diane Smith

_____ April 14, 2008