



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER MO-2450**

**Appeal MA07-415**

**York Regional Police Services Board**



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## **NATURE OF THE APPEAL:**

The York Regional Police Services Board (the Police) received the following request under the *Municipal Freedom of Information and Protection of Privacy Act* (the Act):

I'm the husband and next-of-kin of deceased [named individual] who died tragically on [a specified date] in Islamabad, Pakistan. York Regional Police, Department of Foreign Affairs & International Trade and the Canadian High Commission of Pakistan pursued above case.

I need to obtain records pertaining to my wife's disappearance and death which are held by the York Regional Police.

Initially, the Police identified a police report and a statement as responsive records and disclosed portions of them to the requester. Other portions of these records were withheld on the basis that the undisclosed information was exempt under the discretionary exemption in section 38(b) of the Act (personal privacy).

The requester (now the appellant) appealed the Police's decision.

During mediation, the Police provided this office with an index of records in which they identified as responsive a total of 57 pages of records. The Police relied on sections 38(b) to withhold portions of pages 1-15 and page 57, in its entirety. Pages 16-23 and 56 were disclosed to the appellant, in full. However, the Police withheld Pages 24-55 of the identified records in their entirety on the basis that that they were non-responsive and "not the property of York Regional Police".

The appellant confirmed with the mediator that he wished to pursue access to pages 24-55. In addition, the appellant advised the mediator that he believed there were additional records responsive to his request. The appellant clarified that he was seeking access to all records relating to his wife's disappearance, including records relating to any communications between the Police and other agencies, such as Interpol.

Subsequently, the Police agreed that pages 24-55 were responsive to the request and issued a supplementary decision to the appellant, along with a revised index of records in which they denied access to pages 24-55 pursuant to section 9(1) (relations with other governments).

In further discussions with the mediator, the appellant stated that he did not wish to pursue access to pages 3, 7, 27-55, as he had obtained this information through other sources. Accordingly, these pages are no longer at issue. However, the appellant advised that he did wish to pursue access to pages 24-26 and 57, and that reasonable search was still an issue. The Police agreed to conduct another search for responsive records and, as a result, located additional records. The Police then issued a second supplementary decision along with a second revised index of records. The Index identified the additional records as pages 58-74. With the exception of pages 70-72, which were disclosed in full, the Police's denied access to these records pursuant to sections 9(1)(a), (c) and (d).

The appellant then obtained legal counsel who advised the mediator and the Police that her client wished to pursue access to the records remaining at issue in this appeal, and also raised the possible application of section 16 (compelling public interest). The appellant's counsel also advised that her client was satisfied with the additional searches conducted by the Police and, therefore, the reasonableness of the Police search is no longer an issue in this appeal.

Finally, as it appeared that the records may also contain the personal information of the appellant, the mediator raised the possible application of section 38(a) to the records in which the Police had claimed section 9(1)(a), (c) and (d); and the Police agreed that section 38(a) was applicable. The mediator also raised the possible application of section 38(b) to the other records, and noted that the exception in section 14(4)(c) favouring the disclosure of personal information to close family members may apply.

As no further mediation was possible, the appeal was moved to the inquiry stage of the appeal process, in which an adjudicator conducts an inquiry under the *Act*. The assigned decision maker began his inquiry into this appeal by issuing a Notice of Inquiry and inviting the Police to submit representations in response to the facts and issues set out in the Notice. Representations were submitted in response to the Notice by the Police.

The assigned decision maker also sent the Notice of Inquiry to the Royal Canadian Mounted Police (the RCMP), who were invited to, and ultimately submitted, representations regarding several specific issues relating to the application of sections 9 and 38(a) only.

The appellant was then invited to make submissions in response to the Notice of Inquiry and was given the opportunity to respond to the representations of the Police and the RCMP. Complete copies of the Police and RCMP representations were shared with the appellant. The appellant also submitted representations.

Following my review of the appellant's representations, I forwarded the non-confidential portions to the Police and invited the Police to submit representations in reply. The Police did not submit reply representations.

## **RECORDS:**

A description of the records at issue and the exemptions claimed by the Police are set out in the index of records that follows:

<b>RECORD</b>	<b>PAGE NUMBERS</b>	<b>DESCRIPTION</b>	<b>EXEMPTIONS</b>
1	24-26	Correspondence from Interpol to Police	38(a) & 9(1)(a), (c), (d); 38(b)
2	57	Correspondence to Accused person	38(b)
3	58	Email from Interpol to Police	38(a) & 9(1)(a), (c), (d); 38(b)
4	59-60	Email from Interpol to Police	38(a) & 9(1)(a), (c), (d); 38(b)

5	61	Mail from Police to Interpol	38(a) & 9(1)(a), (c), (d); 38(b)
6	62-64	Email from Police to Interpol	38(a) & 9(1)(a), (c), (d); 38(b)
7	65-66	Mail from Police to Interpol	38(a) & 9(1)(a), (c), (d); 38(b)
8	67-68	Mail from Police to Interpol	38(a) & 9(1)(a), (c), (d); 38(b)
9	69	Mail from Police to Interpol	38(a) & 9(1)(a), (c), (d); 38(b)
10	73	Email from Interpol to Police	38(a) & 9(1)(a), (c), (d); 38(b)
11	74	Email from Interpol to Police	38(a) & 9(1)(a), (c), (d); 38(b)

## **DISCUSSION:**

### **PERSONAL INFORMATION**

In order to determine which sections of the *Act* may apply, 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), in part, 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 where they relate to another 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 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].

The Police submit that the records contain the personal information of the appellant, the appellant's deceased spouse and the individual that was charged in relation to the death (the accused person).

The appellant acknowledges that Record 2 contains the personal information of the accused person and accepts the representations of the Police with respect to the identification of the personal information contained in the records.

### **Analysis and Findings**

I have carefully reviewed the responsive records and find that Records 4, 5, 6, 7 and 8 contain the personal information of the appellant, including his name along with other personal information about him (paragraph (h)), his date of birth and marital status (paragraph (a)), information about his interactions with the Police (paragraph (h)), the personal opinions of the appellant (paragraph (e)) and the views or opinions of other individuals about the appellant (paragraph (g)).

All of the records contain the personal information of the appellant's deceased spouse, including her name along with other personal information about her (paragraph (h)), her date of birth and marital status (paragraph (a)), information about her medical condition (paragraph (b)), her passport number (paragraph (c)), and the views or opinions of other individuals about her (paragraph (g)).

Records 1, 2, 5, 6, 7 and 11 all include personal information of the accused person, including his name along with other personal information about him (paragraph (h)), his address and telephone number (paragraph (d)), the views or opinions of other individuals about him (paragraph (g)), and his name along with information about charges that were laid against him and his interactions with the law enforcement authorities in Pakistan (paragraph (h)). These records also contain information about the deceased and her relationship with the accused person.

The appellant has provided me with a great deal of detailed information which he has gathered from many sources pertaining to the disappearance of his wife and the accused person's alleged involvement in that disappearance. Accordingly, I find that there exists a large amount of information, including personal information, about the accused person which was demonstrated by the appellant to be known to him, or located in the public domain, through access to news reports and website data.

In addition, Record 1 also includes the personal information of two other individuals who were employed by the accused person and were also charged in relation to the death of the appellant's spouse. The personal information relating to these individuals includes their names along with other personal information about them pertaining to the charges laid against them (paragraph (h)). For the reasons which are set out below, it is not necessary for me to consider the personal privacy exemption in relation to this personal information.

As I have found that Records 4, 5, 6, 7 and 8 contain the personal information of the appellant, his right of access to these records is governed by section 36(1) in Part II of the *Act* which gives an individual a general right of access to their own personal information held by institutions. The appellant's right of access to Records 1-3 and 9-11 are governed by section 4(1) in Part I of the *Act*, which gives an individual a general right of access to records in the custody or under the control of an institution that do not contain that individual's personal information.

### **RIGHT OF ACCESS TO ONE'S OWN PERSONAL INFORMATION / RELATIONS WITH OTHER GOVERNMENTS**

As noted above, section 36(1) 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(a), an institution has the *discretion* to deny an individual access to their own personal information where the exemptions in sections 6, 7, 8, 8.1, 8.2, 9, 10, 11, 12, 13 or 15 would apply to the disclosure of that information.

As a result, if section 9(1) applies to any information in the records, its application is discretionary with regard to Records 4, 5, 6, 7 and 8; while it remains a mandatory exemption in its application to Records 1, 3 and 9-11. As set out in the Index of records above, the Police have not claimed section 9(1) in relation to Record 2.

Sections 9(1)(a), (c) and (d) are claimed by the Police. The appellant claims that the exception in section 9(2) applies. These sections state:

(1) A head shall refuse to disclose a record if the disclosure could reasonably be expected to reveal information the institution has received in confidence from,

- (a) the Government of Canada;
- (c) the government of a foreign country or state;
- (d) an agency of a government referred to in clause (a), (b) or (c); or

(2) A head shall disclose a record to which subsection (1) applies if the government, agency or organization from which the information was received consents to the disclosure.

The purpose of this exemption is “to ensure that governments under the jurisdiction of the *Act* will continue to obtain access to records which other governments could otherwise be unwilling to supply without having this protection from disclosure” [Order M-912].

For this exemption to apply, the institution must demonstrate that disclosure of the record “could reasonably be expected to” lead to the specified result. To meet this test, 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 [*Ontario (Workers’ Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)]. If disclosure of a record would permit the drawing of accurate inferences with respect to information received from another government, it may be said to “reveal” the information received [Order P-1552].

Previous orders have found that an expectation of confidentiality must have been reasonable, and must have an objective basis. In determining whether an expectation of confidentiality is based on reasonable and objective grounds, it is necessary to consider all the circumstances of the case, including whether the information was:

- communicated to the institution on the basis that it was confidential and that it was to be kept confidential
- treated consistently in a manner that indicates a concern for its protection from disclosure by the affected person prior to being communicated to the government organization
- not otherwise disclosed or available from sources to which the public has access
- prepared for a purpose that would not entail disclosure [Order PO-2043]

It is not sufficient to simply assert an expectation of confidentiality with respect to the information received by the institution [See Order MO-1288 and MO-1896].

Section 9(2) creates an exception to the exemption and it applies where the government, agency or organization from which the information was received consents to the disclosure of the information.

I agree with and adopt these approaches in this appeal.

## **Representations**

The Police explain that the Canadian Police Information Centre (CPIC) database, which is financed, administered and operated by the RCMP, is used to send and receive messages and correspondence with foreign governments and agencies. They state that all requests from police agencies in Canada for information from and to Interpol go through the RCMP.

Interpol is an international police organization, representing 187 member countries. Its goal is to facilitate cross-border police co-operation and assist in preventing and combating international crime. It does not actively investigate crimes, but acts as a conduit for member countries to share information and seek assistance in criminal investigations in their respective jurisdictions. Interpol Ottawa, which is the Canadian National Central Bureau, serves as the primary link between law enforcement agencies in Canada and those around the world. It is managed by the RCMP and is staffed by RCMP regular and civilian members, public service employees and seconded police officers from other Canadian police agencies [See <http://www.rcmp-grc.gc.ca/ip-pi/interpol-eng.htm>].

The Police state that, with the exception of Record 2, all of the records are computer generated print outs of:

- requests for information or assistance made by the Police through Interpol Ottawa to Interpol Pakistan and the Islamabad Police, or
- information provided to the Police through Interpol Ottawa from the RCMP Liaison Officer for the Canadian High Commission in Islamabad, Pakistan, Interpol Pakistan and the Islamabad Police.

The RCMP concur and state in their representations that the information which was conveyed to the Police by Interpol via CPIC is not “of RCMP origin”. I understand this to mean that it is information received from the Government of Pakistan or the Pakistan National Police Force via the RCMP Liaison Officer for the Canadian High Commission in Islamabad, Pakistan. They also state that other information in the records is information that the RCMP received from the Police. Although the RCMP support the Police’s claim to section 9(1), they argue that because the RCMP is not the originators of the information, they cannot consent to its disclosure. The RCMP submit that the information which it received in confidence from Interpol is exempt under the *Act*, and is also treated by them as exempt under the equivalent provisions of the federal *Access to Information Act*.

With respect to the application of section 9(1), the Police submit that the disclosure of all of the records at issue in this appeal could reasonably be expected to reveal information they received from the Government of Canada or one of its agencies (Interpol Ottawa and the RCMP Liaison Officer of the Canadian High Commission in Pakistan), as well as the Government of Pakistan and one of its agencies (Interpol Pakistan and the Islamabad Police Service). The Police claim that all of the information was received in confidence from these governments, through their agencies. The Police further note that some of the records include a statement of confidentiality and submit that the information which they contain is “loaned to the Police” on the understanding that it is not to be disseminated without the consent of its originator. The Police go on to argue that the failure to find this information exempt may result in other governments and their agencies refusing to supply information to it which would assist it and other Canadian police services in future investigations.

The appellant acknowledges that, on the basis of the description of the records provided by the Police, the disclosure of the records could reasonably be expected to reveal information that the



Police received in confidence from the Government of Canada, the Government of Pakistan and agencies thereof. However, the appellant appears to argue that the Police cannot rely on section 9(1) unless a specific and detailed request for consent to the disclosure under section 9(2) is made of the organization which provided the information. He submits:

[T]hat the ongoing confidentiality requirement of the supplier of the information in the records sought, and the potential effect of the disclosure of those records on the continuing supply of such information to the institution by other governments cannot properly be assessed without the institution seeking consent from the supplier of the information to this disclosure. ... [A] specific, detailed request for consent to disclosure should be made.

### **Analysis and Findings**

Applying the approach taken in previous orders and set out above, in order for section 9(1) to apply, I must be satisfied that the information meets the following criteria:

1. that it was received from one of the agencies or organizations listed in paragraphs (a) through (e), and
2. that disclosure could reasonably be expected to reveal information that was received with a reasonable expectation of confidence or permit the drawing of accurate inferences about such information [Order P-1552].

#### ***Received from one of the agencies or organizations listed in paragraphs (a) through (e)***

Having reviewed all of the records, I find that some of the information in them was “received” by the Police from the Islamabad Police Force, the Canadian High Commission or the RCMP Liaison Officer, with the assistance of Interpol and its branches in Ottawa and Pakistan.

I also find that the Islamabad Police is a department of the Ministry of the Interior of the Government of Pakistan and, therefore, it is an *agency* of a *foreign government* within the meaning of section 9(1)(d). Additionally, both the RCMP Liaison Officer and the Canadian High Commission in Pakistan are agencies of the government of Canada and, therefore, fall within section 9(1)(d), as well.

Having carefully reviewed the records, I find that Records 1, 3, 4, 10 and 11 all include information received from one of the agencies referred to in section 9(1)(d). I will consider below whether the information in these records was received with a reasonable expectation of confidentiality.

In contrast however, I find that Records 5, 6, 7, 8 and 9 do not include any information received from an agency listed in section 9(1)(d) because the information in these records was provided by the Police themselves to other agencies of the Governments of Canada and Pakistan. As a result, the information in Records 5, 6, 7, 8 and 9 was not received by the Police, as is required under section 9(1). I will consider below whether disclosure of the information in these records

would permit the drawing of accurate inferences about information received from one of the agencies or organizations listed.

***Disclosure could reasonably be expected to reveal information that was received with a reasonable expectation of confidence or permit the drawing of accurate inferences about such information***

*Records 1, 3, 4, 10 and 11*

Based on my review of Records 1, 3, 4, 10 and 11 and the representations submitted by the parties, I find that there existed a reasonable expectation of confidentiality on the part of the Islamabad Police Force, the RCMP Liaison Officer and the Canadian High Commission with respect to the information that was provided to the Police in these records. The expectation of confidentiality is expressly stated on the face of some of the records and I have taken that into account in arriving at my decision. I also accept the representations of the Police and the RCMP regarding their expectation of confidentiality and that it is their customary practice to treat communications of this nature as confidential. For these reasons, I find that there existed a reasonably-held expectation of confidentiality with respect to the information contained in Records 1, 3, 4, 10 and 11. Accordingly, I find that the information contained in Records 1, 3, 4, 10 and 11 are exempt under section 9(1)(d), and that Record 4 qualifies for exemption under section 38(a), taken in conjunction with section 9(1)(d).

*Record 8*

Although Record 8 is a communication *from* the Police *to* Interpol, I find that portions of this communication, on page 67, include information that was received in confidence from the RCMP Liaison Officer in Pakistan. As I have found that similar information found in Record 4 above is exempt, I am satisfied that there existed a reasonable expectation of confidentiality with respect to this information and that its disclosure would reveal or permit the drawing of accurate inferences regarding this information. As a result, I find that section 9(1)(d) applies to portions of Record 8 and that these portions therefore qualify for exemption under section 38(a).

The remaining portions of Record 8 represent an electronic communication from the Police to Interpol and it includes information that was *provided by* the Police. Therefore, this information was not “received in confidence” by the Police. I also find that the disclosure of this information would not permit the drawing of accurate inferences with respect to any information that was received in confidence by the Police. Therefore, I find that section 9(1) does not apply to the remaining portions of Record 8.

*Records 5, 6, 7, and 9*

Records 5, 6, 7 and 9 are electronic communications *from* the Police *to* Interpol. As a result, these records cannot be said to have been “received in confidence” by the Police. In fact, much of the information that is contained in these records was provided by the appellant to the Police. I also find that the disclosure of Records 5, 6, 7 and 9 would not reveal information, nor permit the drawing of accurate inferences with respect to information, that was “received in confidence”

by the Police. As a result, I find that section 9(1) does not apply to them.

As noted above, the section 9(1) exemption is a mandatory one in relation to Records 1, 3, 8, 10 and 11 and a discretionary one in relation to Record 4. Consequently, my findings regarding the application of section 9(1) to Record 4 is subject to a review of the Police's exercise of discretion below.

### **Section 9(2)**

Section 9(2) creates an exception to the exemption in section 9(1) where the government or organization from which the information was received consents to the disclosure. As noted above, the appellant argues that the Police have an obligation to seek the consent of the agencies from whom the exempt information was received before they can rely on the exemption in section 9(1). The Police state that although they did not seek the consent of the agencies that provided the information to them, previous contacts regarding the release of similar information has only "reinforced their desire to preserve the confidentiality of using the RCMP, Interpol and CPIC as a means to transport information between two institutions or foreign agencies." The Police state:

Section 9 of the Act mandates the refusal of information received in confidence from one of the identified bodies, it does not infer in anyway that the denial be based upon the resulting actions, if any, taken by the recipient.

Although I notified and received representations from the RCMP, I did not notify the Islamabad Police Force. Notification of an appeal under section 39(3) of the *Act* is discretionary. Section 39(3) states:

Upon receiving a notice of appeal, the Commissioner shall inform the head of the institution concerned of the notice of appeal and may also inform any other institution or person with an interest in the appeal, including an institution within the meaning of the Freedom of Information and Protection of Privacy Act, of the notice of the appeal.

I have considered the nature of the information contained in Records 1, 3, 4, 10 and 11, as well as portions of Record 8 which are subject to the section 9(1)(d) exemption, as well as the representations of the Police regarding previous attempts to obtain consent to disclosure of information of this nature. I have also accepted the representations of the RCMP and the Police regarding the circumstances under which this information was received and their view of the confidential nature of the information. For all of these reasons, I find that it was not necessary in the circumstances of this appeal to notify any of the other parties of the appeal to obtain their consent pursuant to section 9(2) to the disclosure of the information that I found to be exempt under section 9(1)(d).

## **PERSONAL PRIVACY**

I have found above that Records 1, 3, 4, 10 and 11 and portions of Record 8 are, subject to my review of the exercise of discretion in relation to Record 4 below, exempt pursuant to section 38(a) in conjunction with section 9(1). Therefore, it is not necessary for me to consider the Police's claim that these records are also exempt pursuant to section 38(b). I need only consider here the application of the personal privacy exemption to Records 2, 5, 6, 7, 9 and the remaining portions of Record 8.

Previous orders have established that where a record contains both the personal information of the requester and another individual, the request falls under Part II of the *Act* and the relevant personal privacy exemption is the exemption at section 38(b) [Order M-352]. Some exemptions, including the invasion of privacy exemption at section 14(1), are mandatory under Part I but discretionary under Part II, and thus in the latter case an institution may disclose information that it could not disclose if Part I is applied [Order MO-1757-I]. 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. Furthermore, the correct approach is to review the entire record, not only the portions remaining at issue, to determine whether it contains the requester's personal information. This record-by-record analysis is significant because it determines whether the record as a whole (rather than only certain portions of it) must be reviewed under Part I or Part II of the *Act* [Order M-352].

As Records 5, 6, 7, 9 and portions of Record 8 all contain the personal information of the appellant, the deceased and the accused person, the appellant's right of access must be determined pursuant to section 38(b) and the issue that I must determine is whether disclosure would constitute an unjustified invasion of personal privacy. As Record 2 contains only the personal information of the deceased and the accused person, Part I of the *Act* applies and the issue I must determine is whether the disclosure of the personal information in this record would *not* constitute an unjustified invasion of personal privacy under section 14(1).

In both situations, sections 14(1) to (4) provide guidance in determining whether the disclosure constitutes an unjustified invasion of privacy. If any of paragraphs (a) to (h) of section 14(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 38(b). Once established, 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 v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767]. The appellant relies on the compassionate reasons exception in section 14(4)(c) to overcome the application of the presumption in section 14(3)(b) which leads to a finding that disclosure would result in a presumed unjustified invasion of privacy.

### **Section 14(4)(c) – compassionate reasons**

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.

The terms “close relative” and “spouse” are defined in section 2(1) of the *Act* as follows:

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

“spouse” means,

- (a) a spouse as defined in section of the *Family Law Act*, or
- (b) either of two persons who live together in a conjugal relationship outside marriage. (“conjoint”)
- (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.

### ***Representations***

In the context of their argument regarding the possible application of the public interest override in section 16, the Police provided the following background information about this request. They state that the individual charged in relation to the death of the appellant’s wife, the accused person, was a member of the Pakistan Government. They also state that numerous articles were published in local and foreign newspapers regarding the appellant’s wife’s disappearance and subsequent death. As I will explain in greater detail below, it is significant that much of the personal information of the affected party and the deceased has been widely published in the media, and is also known to the appellant.

The Police also state that the records do not contain any information that the appellant has not already been provided with as a result of disclosures that have been made to him by the Police, the Government of Pakistan, the RCMP Liaison Officer in Pakistan and the Islamabad Police Force. They submit that section 14(4)(c) does not apply because disclosure is not desirable for compassionate reasons. They also allege that the reason the appellant wants access to the records is to commence a civil action against various agencies and parties involved in the investigation of the death of his spouse, which they argue is an insufficient basis for the application of this section.

The appellant submits that disclosure is required for compassionate reasons and that section 14(4)(c) applies. He argues that his intention to pursue any legal remedies that may be available to him is entirely secondary to his desire to be fully apprised of the circumstances surrounding

his spouse's death. His last contact with her was in February of 2007, four months prior to her death. He admits to questioning whether he and the agencies he sought assistance from might have done more and he will continue to be troubled by that thought until access to the records at issue is granted. However, he states that the disclosure is required for greater peace of mind and will assist him with his current anxiety and uncertainty.

### ***Analysis and Findings***

Section 14(4)(c) permits disclosure of personal information about a deceased individual to the spouse or close relative of the individual where it is desirable for compassionate reasons. In Orders MO-2237 and MO-2245, Assistant Commissioner Brian Beamish considered the interpretation of this section. After reviewing the legislative history, he came to the following conclusion:

...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 recognized that, for surviving family members, greater knowledge of the circumstances of their loved one's death is by its very nature compassionate.*** [Emphasis added]

In these previous orders, the Assistant Commissioner also found that a determination regarding the application of section 14(4)(c) requires a consideration of the following questions, all of which must be answered in the affirmative 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 desirable for compassionate reasons, in the circumstances of the request?

I will adopt the approach in Orders MO-2237, MO-2245 and MO-2387 in determining whether section 14(4)(c) applies to the personal information remaining at issue.

I have found above that all of the records contain the personal information of the appellant's deceased spouse and, therefore, the first and second requirements for the application of section 14(4)(c) have been met. In Order MO-2237, Assistant Commissioner Beamish also made the following comments about the definition of "compassionate" which is contained in the third requirement for the application of this section:

As is suggested by the Police and the appellant in the representations referred to above, section 14(4)(c) raises an issue about the interpretation of the words "desirable for compassionate reasons". The appellant refers to the *Webster's Online* dictionary definition of "compassion." 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.

As discussed above, 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.

I adopt this reasoning in this appeal and I find that the disclosure to the appellant of his deceased spouse’s personal information that is contained in the records will serve to assist him in better understanding the circumstances surrounding the death, including the circumstances that existed in the days prior to her death when she was absent from the country and residing in Pakistan. In my view, disclosure is, in the circumstances of this appeal, “desirable for compassionate reasons.” The fact that the appellant may be considering a civil proceeding arising from the death of his wife does not negate his desire for access to all information about the circumstances of her death, nor does it take the request outside the ambit of the compassionate criteria described above. I accept his representations in that regard and have taken into account the fact that the Police were given an opportunity to comment on the appellant’s representations on this issue and they declined to do so.

I have also taken into account the fact that the appellant has gained access to some information from the Police and from other sources relating to his wife’s death. However, the information contained in Records 2, 5, 6, 7 and those portions of Record 8 which are not subject to the section 9(1)(d) exemption include information that has not been provided to him and is material to the circumstances surrounding his wife’s death.

I now turn to consider the personal information of the accused person. Similar to the circumstances at issue in Order MO-2237, I find that the personal information of the deceased is intertwined with the personal information of the accused person in a way that cannot be fully resolved by severing. Accordingly, I find that these records raise the question of how to treat information that is clearly the personal information of the deceased individual, but, at the same time, is also the personal information of the accused person. In Order MO-2237, Assistant Commissioner Beamish stated:

Accordingly, in my view, it is consistent with both the definition of “personal information” in section 2(1) and the legislative purpose behind this section to interpret “personal information about a deceased individual” as including not only personal information solely relating to the deceased, but also information that

qualifies as the personal information of not only the deceased, but another individual or individuals as well.

I will adopt the same approach here and will consider all the relevant circumstances including the nature of the request, and the privacy interests of the appellant's wife *and* the accused person.

I have already found that section 14(4)(c) applies to the personal information of the deceased. I note that Records 5, 6, 7 and 9 are communications from the Police to Interpol which include information that was provided to the Police by the appellant; specifically the accused person's name and contact details and his business and living arrangements with the deceased. Based on my review of the records, it is clear that all of the accused person's personal information of this nature was provided by the appellant to the Police. Other personal information about the accused person was widely reported in the media both in Canada and in Pakistan and is, therefore, publicly available information. This includes sensitive information relating to the accused person's alleged involvement with certain law enforcement authorities in Pakistan. I give considerable weight to these circumstances in this appeal.

Although I appreciate the sensitive nature of some of the accused person's personal information in these records, I attribute little weight to this factor given the breadth of the media coverage of this case and the repeated nature of the disclosure of this personal information.

Based on the considerations set out above, I find that neither section 38(b) nor section 14(1) apply to the personal information of the accused person in Records 2, 5, 6, 7 and the remaining portions of Record 8, as disclosure would not constitute an unjustified invasion of the accused person's privacy. As I have found that no other exemptions apply to these records, I will order that they be disclosed to the appellant.

In summary, I find that section 14(4)(c) applies to all of the personal information of the deceased and the accused person that is contained in Records 2, 5, 6, 7, 9 and those portions of Record 8 which are not subject to the section 9(1)(d) exemption. As a result, it is not necessary for me to consider the Police's position that this information is subject to a presumption in section 14(3)(a) and/or (b) with respect to this information.

### **EXERCISE OF DISCRETION**

I now turn to review the Police's exercise of discretion in relation to Record 4 which I have found is subject to the discretionary exemption in section 38(a), in conjunction with section 9(1)(d).

The section 38(a) exemption is discretionary, and permits an institution to disclose information, despite the fact that it could withhold it. On appeal, an adjudicator may review the institution's decision in order to determine whether it exercised its discretion and, if so, to determine whether it erred in doing so. I may find that the Police erred in exercising their discretion where, for example, they do so in bad faith or for an improper purpose, they take into account irrelevant considerations, or they fail to take into account relevant considerations. In these cases, I may send the matter back to the Police for an exercise of discretion based on proper considerations



(Order MO-1573). However, I may not substitute my own discretion for that of the Police.

The Police state that they exercised their discretion by disclosing information to the appellant in relation to the investigation into the death of his wife and that the only information that they withheld was information created by the Police and other government organizations with a view to protecting the process of sharing of confidential information with other levels of government. They argue that communication between agencies is a valuable resource that aids in the criminal investigation process and without the protection of confidentiality there might exist an unwillingness of other governments and foreign agencies to supply information that would be of assistance to the Police.

The appellant states that the Police failed to have adequate and appropriate regard to several relevant considerations in the exercise of its discretion, particularly whether the appellant had a sympathetic or compelling need to receive the information and the relationship between him and his deceased wife.

I have reviewed the representations of the Police and the appellant and, in the circumstances of this appeal, I am satisfied that the Police have taken appropriate factors into consideration in exercising their discretion and that they have not erred in exercising their discretion to withhold information in Record 4 under section 38(a) of the *Act*. In my view, there is no basis upon which to interfere with the exercise of discretion by the Police. I find that the exercise of discretion by the Police in withholding Record 4 was appropriate and I will not disturb it on appeal.

### **PUBLIC INTEREST OVERRIDE**

Section 16 states:

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

For section 16 to apply, two requirements must be met. First, there must be a compelling public interest in disclosure of the records. Second, this interest must clearly outweigh the purpose of the exemption.

In considering whether there is a “public interest” in disclosure of the record, the first question to ask is whether there is a relationship between the record and the *Act*’s central purpose of shedding light on the operations of government [Order P-984]. Previous orders have stated that in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing the citizenry about the activities of their government, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices [Order P-984].

## **Representations**

The Police submit that any public interest in the circumstances of the appellant's spouse's death has been satisfied by the disclosure of information that has been published in local and foreign newspapers and by the previous disclosure of information by the Police and by other organizations. It also submits that the public would not benefit in any way from the disclosure of the records, the purpose of the mandatory exemption in section 9(1) outweighs any public interest, and disclosure of the records would compromise the sharing of information between foreign government and agencies.

The appellant submits that this appeal raises a compelling public interest in relation to how Canadian law enforcement agencies respond to concerns that the health and safety of a Canadian abroad is threatened by possible criminal wrongdoing and the records sought provide a representative example of the operations of government in responding to allegations of this nature. He argues that the ability of the Canadian law enforcement agencies to investigate allegations of threat or harm to citizens abroad is a matter that rouses a strong interest or attention in many members of the Canadian public. In addition, he states that disclosure of these records can reasonably be expected to shed light on the procedure and the actions taken by the Canadian law enforcement agencies and inform public debate about the sufficiency of existing arrangements. The appellant argues that in addition to informing the public about issues of this nature the records relate to the public interest in the administration of criminal justice and the effective prosecution of the accused in relation to the death of a Canadian citizen.

With respect to the second requirement for the application of section 16, the Appellant submits:

The purpose of the exemption is to satisfy the confidentiality requirement of the supplier of the information, and thus protect the flow of information that other governments and their agencies might otherwise be unwilling to supply. The flow of information is not an end in itself, but a means by which governments and institutions can achieve their objectives. In the law enforcement context, as the institution notes, the satisfaction of the suppliers' requirement of confidentiality helps to ensure continued communication between domestic law enforcement, other levels of government, and foreign law enforcement agencies, which is "a valuable resource that aids in the criminal investigation process." Thus, in the ordinary course, the preservation of confidentiality assists law enforcement agencies in investigating criminal activity, collecting evidence for prosecution, and protecting public safety.

In this case, however, the preservation of confidentiality in these records has impeded the effective gathering of evidence of illegal confinement and the prosecution of the accused for such offences. Thus, the appellant submits that the purpose of the exemption – ultimately not the unimpeded flow of information per se but the flow of information in furtherance of specific ends – is served in this case only to a very limited extent if at all. Given that fact, the appellant submits that the public interest in this case is not merely compelling; it also clearly outweighs the purpose of the exemption.

## **Analysis and Findings**

I have ordered the disclosure of a significant amount of information as a result of my findings that the mandatory exemption in section 14(1) and the discretionary exemption in section 38(b) do not apply to much of the information at issue in this appeal. I accept the representations of the Police in regard to the nature and amount of information that has been disclosed to the appellant by the Police and by other agencies or institutions, including agencies of the foreign government. I have also reviewed the records at issue here and have carefully considered the information that I have found is exempt.

At the outset, I accept the appellant's argument about the impact of the denial of access might have on his ability to gather evidence to aid the prosecution of the accused for various offences. However, based on my review of the representations of the parties and particularly the records that are subject to the section 9(1)(d) exemption, I am not satisfied that information of this nature exists in these records.

Accordingly, I find that section 16 does not apply to the records that I have found are exempt under section 9(1)(d), which are the communications received by the Police from agencies of the Government of Canada and a foreign government. Although some of the information in the records may shed some light on the activities of the Police in responding to complaints of the kind at issue here, having carefully reviewed the records, I am not satisfied that there exists a compelling public interest in the disclosure of the information that I have found is exempt.

The appellant argues that there is also a public interest in the disclosure of information that would shed light on the administration of criminal justice and prosecutions relating to the death of Canadian citizens living and travelling abroad. In my view, the disclosure of the information contained in the records withheld under section 9(1)(d) would not serve that purpose.

If there is a compelling public interest more generally in the issues relating to this appeal, I find that the interest is satisfied by the disclosure of the records that will be made as a result of this order and the disclosure of records made previously. The records to be disclosed reveal information about the actions taken by the Police in response to the complaints filed by the appellant and as a result, they serve to inform public debate about the activities of the Police in response to complaints of this nature.

In addition, I also find that even if there exists a compelling public interest in the records that I have found to be exempt, it does not outweigh the purpose of the section 9(1) exemption which is "to ensure that governments under the jurisdiction of the *Act* will continue to obtain access to records which other governments could otherwise be unwilling to supply without having this protection from disclosure." I accept the evidence of both the Police and the RCMP about the impact that an order for the disclosure of information received from foreign governments and agencies might have on the Police's ability to receive sensitive communications from those same governments in the future.

Accordingly, I find that section 16 does not apply in the circumstances of this appeal.

**ORDER:**

1. I uphold the decision of the Police to withhold access to Records 1, 3, 4, 10 and 11 and those portions of Record 8 which are highlighted on the copy of this record that I have provided to the Police with this order.
2. I order the Police to disclose Records 2, 5, 6, 7, 9 and portions of Record 8 that I have found are not exempt by **September 29, 2009** but not before **September 24, 2009**.
3. In order to verify compliance with this order, I reserve the right to require the Police to provide me with a copy of the records disclosed pursuant to Order Provision 2 above.

Original Signed by: \_\_\_\_\_  
Donald Hale  
Adjudicator

\_\_\_\_\_ August 24, 2009