



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

ORDER PO-2850

Appeal PA07-395

Ministry of Community Safety and Correctional Services



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NATURE OF THE APPEAL:

The Ministry of Community Safety and Correctional Services (the Ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to reports prepared by the Ontario Provincial Police (the OPP) pertaining to the drowning death of the requester's son (the deceased) on a specified date.

The Ministry issued a decision in response to the request in which it granted partial access to the records requested. Access to part of the responsive information was denied pursuant to the following sections of the *Act*:

- section 49(b), read with section 21(1) (personal privacy)
- section 49(a), read with the law enforcement exemptions in sections 14(1)(l) (commission of an unlawful act or control of crime) and 14(2)(a) (law enforcement report)
- section 49(a), read with the exemption in section 15(b) (information received from another government).

In support of its section 49(b)/21 exemption claim, the Ministry cited the application of the presumption in section 21(3)(b) (investigation into violation of law) and the factor in section 21(2)(f) (highly sensitive). The Ministry also noted that some information, such as computer generated text and administrative codes used in the printing of the reports, had been removed as being non-responsive to the request.

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

During the mediation stage of the appeal process the appellant indicated to the mediator that he is seeking access to information pertaining to his son's death, particularly any witness statements compiled by the OPP, including those of two friends whom the appellant believes were with his son at the time of his death. He advised that he is seeking this information for compassionate reasons and to better understand the circumstances surrounding his son's death, thereby giving rise to the possible application of the exception in section 21(4)(d) of the *Act*.

Witness statements were not originally included as responsive records in this appeal, as the Ministry noted that the appellant's request had only specified "police reports." The mediator advised the Ministry that the appellant was particularly interested in pursuing witness statements and therefore requested that they be considered as part of this appeal. During mediation, the Ministry agreed to include all witness statements as part of the responsive records, and subsequently issued a supplementary decision to the appellant. The Ministry noted in its supplementary decision that it wishes to apply the exemptions claimed in the original decision letter to the witness statements.

During mediation, the mediator attempted to notify six individuals whose interests may be affected by the disclosure of the records (the affected parties) to determine whether they consent

or object to the release of their personal information to the appellant. One individual consented to the release of his witness statement (with the exception of his name and contact information) and the Ministry accordingly forwarded this information to the appellant along with the supplementary decision letter referred to above. Two individuals objected to the release of their personal information in this appeal, two individuals did not respond to the notification and one notification was returned to our office indicating that the addressee had moved.

In further discussions with both the Ministry and the appellant, the mediator addressed the outstanding issues pertaining to this appeal as follows:

- The appellant advised the mediator that he does not wish to pursue access to information pertaining to the coroner, namely his date of birth and contact information, which was severed from the records at issue. This information was, therefore, removed from the scope of the appeal.
- The appellant advised the mediator that he does not wish to pursue access to the non-responsive portions of the records; therefore, this information was also removed from the scope of the appeal.
- The appellant advised the mediator that he does not wish to pursue access to the police codes or duty locations; therefore, section 14(1)(l) was removed from the scope of the appeal.
- The Ministry advised that it was withholding the names and identification numbers of two ambulance attendants due to concerns it has regarding certain actions by the appellant in this case. The appellant advised that he would like access to this information. Therefore, this information remains at issue in the appeal.
- The Ministry advised that it had considered the application of section 21(4)(d) to the records at issue, and that all relevant records have been released to the appellant in this regard. The Ministry also requested that the mediator inquire as to whether the deceased individual had a personal representative for notification purposes, as outlined in section 28(10) of the *Act*. The appellant advised the mediator that he has no information regarding a personal representative of the deceased.
- In discussions with the mediator, the Ministry also withdrew sections 49(a) and (b) from the scope of the appeal, since none of the records appear to contain the requester's own personal information. Accordingly, the application of sections 49(a) and (b) were removed from the scope of the appeal.
- The appellant advised the mediator that he wishes to pursue access to all records remaining at issue in this appeal, including the names and contact information of all witnesses.

As no further mediation was possible, this file was referred to the adjudication stage of the appeal process for an inquiry, where the central issues to be determined are the application of the mandatory personal privacy exemption in section 21(1), the discretionary law enforcement exemption in section 14(2)(a) and the discretionary exemption in section 15(b).

I commenced my inquiry by issuing a Notice of Inquiry, seeking representations from the Ministry on all issues and from four affected parties on the application of the personal privacy exemption. The Ministry submitted representations in response and agreed to share the non-confidential portions with the appellant. I did not receive representations from the affected parties.

I then sought representations from the appellant and included with my Notice of Inquiry a severed copy of the Ministry's representations. Portions of the Ministry's representations were not disclosed due to confidentiality concerns. The appellant submitted representations in response.

RECORDS:

There are nine records at issue. The records at issue and the exemptions claimed are described in the following table:

Record #	Description	Severed or Withheld in Full	Exemptions Claimed
1	OPP occurrence report	Severed	21(1), 14(2)(a), 15(b)
2	OPP occurrence report	Severed	21(1), 14(2)(a), 15(b)
3	OPP supplementary occurrence report	Withheld in full	21(1), 14(2)(a), 15(b)
4	OPP supplementary occurrence report	Withheld in full	21(1), 14(2)(a), 15(b)
5	Witness statement	Severed	21(1), 14(2)(a), 15(b)
6	Witness statement	Withheld in full	21(1), 14(2)(a), 15(b)
7	Witness statement	Withheld in full	21(1), 14(2)(a), 15(b)
8	Witness statement	Withheld in full	21(1), 14(2)(a), 15(b)
9	Witness statement	Withheld in full	21(1), 14(2)(a), 15(b)

DISCUSSION:

LAW ENFORCEMENT REPORT

Section 14(2)(a) states:

A head may refuse to disclose a record,

that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law;

The term “law enforcement” is used in several parts of section 14, and is defined in section 2(1) as follows:

“law enforcement” means,

- (a) policing,
- (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and
- (c) the conduct of proceedings referred to in clause (b)

Although the institution of record is the Ministry, the OPP are the agents of the Ministry in this case. There is no dispute that the OPP are “an agency which has the function of enforcing and regulating compliance with a law,” and that the records at issue here were “prepared in the course of a “law enforcement investigation,” specifically the drowning death of the requester’s son.

The only issue in dispute is whether the records qualify as “reports” for the purpose of section 14(2)(a).

Under section 14(2)(a), the word “report” means “a formal statement or account of the results of the collation and consideration of information.” Generally, results would not include mere observations or recordings of fact [Orders P-200, MO-1238, MO-1337-I].

The title of a document is not determinative of whether it is a report, although it may be relevant to the issue [Order MO-1337-I].

The Ministry did not make representations on the application of the section 14(2)(a) exemption despite having raised it.

The appellant’s representations also do not address the application of the section 14(2)(a) exemption to the records at issue.

The records at issue fall into the following two categories: occurrence reports and witness statements.

Applying a long line of previous orders involving occurrence reports similar in nature to those at issue in this appeal, I find that the occurrence reports at issue here (Records 1, 2, 3 and 4) do not qualify as “reports” for the purposes of section 14(2)(a) of the *Act*. Generally, occurrence reports generated by police have been found not to meet the definition of “report” under the *Act*, as they are more in the nature of recordings of fact than formal, evaluative accounts of investigations [see Orders PO-1845, PO-1796, P-1618, MO-2266, MO-1986, MO-1771-I, M-1341, M-1141 and M-1120]. In Order M-1109, Assistant Commissioner Tom Mitchinson made the following comments about police occurrence reports:

An occurrence report is a form document routinely completed by police officers as part of the criminal investigation process. This particular Occurrence Report consists primarily of descriptive information provided by the appellant to a police officer about the alleged assault, and does not constitute a “report.”

On my review of the occurrence reports at issue in this appeal, I am satisfied that they also do not meet the definition of “report” under the *Act*, as they consist essentially of observations and recordings of fact. Although there are a few comments by police officers which might be considered evaluative, the records consist primarily and essentially of descriptive information.

Regarding the witness statements (Records 5, 6, 7, 8 and 9), I find that the statements reflect factual accounts made by various witnesses to the incident in question. They have not been collated by the various police officers into any sort of comprehensive document reflecting a consideration of the information gathered from the witnesses, and are clearly the types of records routinely found to fall outside the definition of “report” [see, for example, Orders M-720, M-855, MO-1197, MO-1201, MO-1868-R].

Accordingly, I find that the records do not qualify for exemption under section 14(2)(a) of the *Act*.

RELATIONS WITH OTHER GOVERNMENTS

As indicated above, the Ministry has claimed the application of section 15(b) to the records at issue.

Section 15(b) states:

A head may refuse to disclose a record where the disclosure could reasonably be expected to,

reveal information received in confidence from another government or its agencies by an institution; or

and shall not disclose any such record without the prior approval of the Executive Council.

Section 15 recognizes that the Ontario government will create and receive records in the course of its relations with other governments. Similarly, the purpose of section 15(b) is to allow the Ontario government to receive information in confidence, thereby building the trust required to conduct affairs of mutual concern with other governments [Order P-1398, upheld on judicial review in *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner)* (1999), 118 O.A.C. 108 (C.A.); see also Orders PO-1927-I, PO-2569, PO-2647, and PO-2666]. This interpretation is consistent with the legislative history of the *Act*, cited in Order 69, which refers to a statement by then Attorney General Ian Scott in the Legislature, that the purpose of the exemption was “to protect intergovernmental relations between the provinces or with the feds or with international organizations.” (Hansard, March 23, 1987, after second reading of the bill.)

For this exemption to apply, the Ministry must demonstrate that disclosure of the record “could reasonably be expected to” lead to the specified result. To meet this test, the Ministry 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.); see also Order PO-2439].

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].

For a record to qualify for exemption under subsection 15(b), the institution must establish that:

1. the records must reveal information received from another government or its agencies; and
2. the information must have been received by an institution; and
3. the information must have been received in confidence. [Order P-210]

Municipal police forces have been found not to qualify as agencies of another government for the purposes of this section [Orders PO-2715, PO-2751].

The Ministry has chosen to not provide representations on the application of the section 15(b) exemption to the records at issue.

On my review of the records at issue, it is clear that all of them were prepared by the OPP in the course of conducting its investigation into the deceased’s death. The Ministry’s responsibilities include the oversight of policing services throughout Ontario, including the activities of the OPP (see: www.mcscs.jus.gov.on.ca/english/about_min/mandate/mandate.html). There is no indication that any of the information contained in the records was received from another

government or its agencies. Accordingly, I find that the section 15(b) exemption does not apply in the circumstances of this appeal.

PERSONAL INFORMATION

The Ministry relies on the personal privacy exemption in section 21(1) as the basis for denying access to the undisclosed information in the records. This exemption can only apply to records containing “personal information,” as defined in section 2(1) of the *Act*, so I will consider this requirement first.

“Personal information” is defined, in part, in section 2(1) as follows:

“personal information” means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- ...
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except if they relate to another individual,
- ...
- (g) the views or opinions of another individual about the individual, and
- (h) the individual’s name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

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

Sections 2(2), (3) and (4) also relate to the definition of personal information. These sections state:

(2) Personal information does not include information about an individual who has been dead for more than thirty years.

(3) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.

(4) For greater certainty, subsection (3) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be “about” the individual [Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225].

Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual [Orders P-1409, R-980015, PO-2225 and MO-2344].

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

The Ministry submits that the records at issue contain the personal information of the deceased and a number of affected parties. With regard to the information about the affected parties, the Ministry states that the records at issue contain their names, ages, address information and statements they gave to the OPP during the course of its investigation.

The appellant’s representations do not address this issue.

Having carefully reviewed the Ministry’s representations and the records at issue, I find that they contain the deceased’s personal information, including his name, age and sex, as well as the views or opinions of other individuals about the deceased. I also find that the records contain the personal information of six affected parties, including their names, dates of birth, addresses, telephone numbers and, in some cases, their views and opinions regarding the deceased’s drowning or other information that describes their relationship with the deceased.

I also note that one of the records contains the names and identification numbers of two ambulance attendants. As indicated in the “Background” section of this order, the Ministry has objected to the release of this information due to concerns about certain alleged actions by the appellant in this case. While I acknowledge the Ministry’s concerns, I note that it has not provided any information in its representations to support these concerns. In my view, this

information clearly falls within the exception in section 2(3), since the information about the ambulance attendants identifies these individuals in a professional or official capacity. Based on the limited information before me, I am satisfied that the section 2(3) exception applies in this case. Accordingly, I will order the names and identification numbers of the two ambulance attendants to be disclosed as it does not constitute their “personal information” for the purposes of the *Act*.

PERSONAL PRIVACY

Having found that the records at issue contain the personal information of the deceased and six affected parties, as defined in section 2(1) of the *Act*, I will now consider whether this information is exempt from disclosure under section 21(1).

Where a requester seeks the personal information of another individual, section 21(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 21(1) applies. If the information fits within any of the paragraphs of (a) to (f) of section 21(1), it is not exempt from disclosure under section 21(1). In the circumstances of this appeal, section 21(1)(f) is relevant. That provision reads:

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

if the disclosure does not constitute an unjustified invasion of personal privacy.

If any of paragraphs (a) to (h) of section 21(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 21. Once established, a presumed unjustified invasion of personal privacy under section 21(3) can only be overcome if section 21(4) or the “public interest override” at section 23 applies [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767].

If none of the presumptions in section 21(3) apply, the institution must consider the application of the factors listed in section 21(2), as well as other considerations that are relevant in the circumstances of the case. If a presumption listed in section 21(3) has been established, it cannot be rebutted by either one or a combination of the factors set out in section 21(2).

Section 21(4)(d) refers to certain types of information whose disclosure *does not* constitute an unjustified invasion of personal privacy and it is relevant to this appeal. That section states:

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.

Based on the wording of this provision, a finding that the exception in section 21(4)(d) applies to the personal information in this appeal means that the disclosure of that information would not be an unjustified invasion of personal privacy.

Section 21(4)(d)

Since 1999 this office has been advocating for greater disclosure of information to close family members about the deaths of loved ones. In the 1999 IPC Annual Report, this office recommended statutory changes that would assist close family members in obtaining information surrounding the circumstances of a relative's death. Prior to issuing the 1999 Annual Report, the IPC undertook a study on the impact of the provincial and municipal Acts on individuals seeking access to information about deceased loved ones. As part of this study, the office consulted with two professional psychologists practising in the area of bereavement counselling, who provided a report that included the following statement:

For bereaved adults and children alike, understanding the full details and circumstances surrounding a loved one's death is an integral part of the grief process. As psychologists working with bereaved individuals, we are all too aware of the critical role that access to information plays in either helping or hindering the process.

Particularly, in the case of trauma, denial of factual information surrounding a loved one's death often tortures the survivor as they struggle to derive some sense of purpose and meaning in such a horrific experience. Understanding the nature and extent of the deceased injuries, how the death occurred, and the level of consciousness and pain felt has the potential to palliate the survivor's anguish.

Subsequently, identical amendments were made to both the *Act* and the *Municipal Freedom of Information and Protection of Privacy Act* (the *Municipal Act*) that would give effect to this office's recommendations. Section 21 (4)(d) was added to the *Act* and section 14(4)(c) was added to the *Municipal Act*.

Assistant Commissioner Brian Beamish addressed the legislative changes for the first time in Order MO-2237, in which he applied section 14(4)(c) of the *Municipal Act*. In determining the scope of the section, he reviewed the relevant legislative history. He came to the following conclusion regarding the application of section 14(4)(c):

...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]

This approach has been consistently adopted in similar cases [see, for example, Orders MO-2245 and MO-2420]. I adopt this approach in determining whether the information remaining at issue in this case should be disclosed to the appellant.

Steps to follow in applying section 21(4)(d)

In Order MO-2237, Assistant Commissioner Beamish determined that the application of this section 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?

These steps were also followed more recently in Orders MO-2240 and MO-2245. I agree with and adopt this approach in determining the application of section 21(4)(d) in this appeal.

Step 1 – Personal Information of the Deceased

The Ministry argues that the portions of the records that remain at issue contain mainly the personal information of the affected parties, not the deceased. The Ministry submits that a small amount of personal information relates to the deceased, including observations about the deceased made by others.

As stated above, I have found that the information in the records at issue in this appeal constitutes the personal information of the deceased and six affected parties. I acknowledge that this personal information is somewhat intertwined, because the records contain the affected parties’ views and opinions about the deceased or other information that describes the nature of their relationship with the deceased. However, in my view, with respect to five of the affected parties, the deceased’s personal information can be isolated by simply severing all identifying information of the affected parties, including their names, contact information and other information that could reveal their identities. Once this exercise has been completed, only the deceased’s personal information remains, including information that directly describes the circumstances surrounding his death. With respect to the sixth affected party, I note that Records 2 and 3 contain the personal information of that affected party that is inextricably intertwined with the deceased’s personal information. Severing this information to avoid disclosure of this affected party’s personal information is not practicable and I will not attempt to do so in this case.

As the records at issue contain the deceased’s personal information, I am satisfied that the first requirement for the application of section 21(4)(d) has been satisfied.

Step 2 – Spouse or “Close Relative”

The term “close relative” is 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;

I am satisfied that the appellant is the deceased’s father and, as a result, a parent of the deceased whose personal information is contained in the records at issue. There is some suggestion in the mediator’s notes in the file that the appellant is estranged from other members of the family. However, the nature of the appellant’s relationship with his family is not addressed by the representations received from the Ministry or the appellant and, nonetheless, is irrelevant in determining whether the second requirement has been met. In my view, the legislative history of section 21(4)(d) points to an objective determination of the second requirement, not one based on subjective factors, such as, the nature of the relationship between a close relative and the deceased. Accordingly, as the parent of the deceased, I am satisfied that the appellant qualifies as a close relative as defined in the *Act*. I find that the second requirement for the application of section 21(4)(d) is satisfied.

Step 3– Desirable for Compassionate Reasons

The Ministry states that it considered the application of section 21(4)(d) in determining what information to disclose to the appellant and that the information it has already disclosed to the appellant is sufficient to meet the requirements of that section. The Ministry submits that the information it has disclosed provides the appellant with “detailed, factual knowledge of the circumstances” surrounding the deceased’s death. The Ministry argues that to disclose the information at issue would represent a “distinct lack of compassion towards the privacy rights of the third party witnesses, who have either not consented, or who have opposed the disclosure of their personal information to the [appellant].” The Ministry adds that, in its view, the appellant has not provided any insight into why he is seeking the information at issue for compassionate reasons. The Ministry submits that it would be “reckless and in contravention of third party privacy rights” to disclose additional information without first being satisfied that the appellant is seeking the information at issue for compassionate reasons.

The appellant’s representations on this issue are brief. He states that he is interested in obtaining information about the people who were with his son at the time of his death. He adds that as the father of the deceased, he wants to gain insight into the last moments of his son’s life.

As noted above in the passage quoted from Order MO-2237, 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.” This office has, accordingly, taken a broad approach in determining whether the disclosure of information in a particular case is “desirable for compassionate purposes.” [See Orders MO-2237, MO-2245 and MO-2420]

I adopt this broad approach in considering the third requirement for the application of section 21(4)(d) in the circumstances of this case. I am satisfied that disclosure of much of the

information remaining at issue in the records is desirable for compassionate reasons and does not constitute an unjustified invasion of the deceased individual's privacy or the privacy of the affected parties, so long as the personal identifiers of the five affected parties are severed.

It is clear that the Ministry recognized the need to consider the application of section 21(4)(d) in these circumstances and it appears that it turned its mind to its application in determining whether or not to disclose the information at issue to the appellant. I also understand that the Ministry believes that the appellant has failed to establish compassionate grounds for seeking the information in the records and that disclosure of the information being sought would unduly contravene the affected parties' privacy rights.

In my view, while the appellant's representations are brief, I find that his stated interest in gaining insight into the last moments of his son's life point to a desire for answers to questions surrounding his death in order to achieve some closure. In echoing the words of the psychologists and Assistant Commissioner Beamish referred to above, understanding the full details and circumstances surrounding a loved one's death is an integral part of the grieving process and gaining greater knowledge of the circumstances of that death is by its very nature compassionate. In my view, it is natural for a parent to want as much information as possible about a child's death in order to undertake and complete the difficult grieving process. Accordingly, while the appellant may not have articulated his feelings fully, I find that further disclosure is desirable for compassionate reasons in this case. I am also satisfied that much of the information remaining at issue can be disclosed on compassionate grounds without compromising the personal privacy of the affected parties. Accordingly, I find that the third requirement for the application of section 21(4)(d) is satisfied.

To conclude, I find that the records at issue contain information that meets the three requirements under section 21(4)(d) and I will order the Ministry to disclose this information on compassionate grounds to the appellant.

Finally, I note that there is a small amount of information pertaining to the deceased that is rather sensitive. In my view, disclosure of this information would not shed light on the circumstances surrounding the deceased's death. Therefore, I am satisfied that disclosure of this information would not be desirable for compassionate reasons. I will address, below, the treatment of this remaining personal information about the deceased as well as the personal information remaining at issue about the affected parties.

Personal information remaining at issue

Turning briefly to the personal information remaining at issue, namely sensitive personal information about the deceased and the personal identifiers of the affected parties, I note that the records at issue were created as a result a police investigation into the circumstances surrounding the deceased's drowning. This gives rise to the possible application of the presumption in section 21(3)(b), which states:

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 Ministry has raised the application of the presumption in this case and I am satisfied that the information in the records was compiled and is identifiable as part of a police investigation into a possible violation of law under the *Criminal Code* regarding the events surrounding the deceased's death. The fact that it appears that no criminal proceedings were commenced against any individuals as a result of this incident is not determinative of the application of the section 21(3)(b) presumption. The presumption only requires that there be an investigation into a possible violation of law [Order P-242].

Accordingly, I find that the section 21(3)(b) presumption applies to the personal information remaining at issue. Having found that the section 21(3)(b) presumption applies, I am not at liberty to consider other factors in support of disclosure of this record, aside from the possible application of the exceptions in section 21(4) or the section 23 "public interest override."

I considered above the application of the exception contained in section 21(4)(d) of the *Act* and found that it applied in part. The remaining information at issue does not fall within the ambit of any other provision in section 21(4). In addition, the application of the "public interest override" at section 23 of the *Act* has not been raised, and I find that it has no application in the circumstances of this appeal.

In conclusion, as a result of the application of section 21(3)(b), I find that the disclosure of the remaining personal information in the records would result in an unjustified invasion of the personal privacy of individuals other than the appellant. Therefore, this information is exempt under section 21(1).

ORDER:

1. I order the Ministry to disclose portions of the records to the appellant by **January 7, 2010** but not before **December 31, 2009**, in accordance with the highlighted version of the records included with the Ministry's copy of this order. For the sake of clarity, I have highlighted the portions of the records that are **not** to be disclosed.
2. I order the Ministry to forward a copy of the severed records ordered disclosed to the appellant's attention at the address provided to it in the covering letter attached to this order.

3. I remain seized of this matter in order to address any compliance issues arising from Provisions 1 and 2 of this order.

Original signed by: _____
Bernard Morrow
Adjudicator

_____ November 30, 2009