



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2823

Appeal PA08-58

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:

...Police Reports on behalf of my brother. He died [on a specified date in 2007]. There will be several dates involved. But I'm looking for any reports from Jan 01 2007 until present. The address is [...]. The [. . .] OPP was at their home numerous times. The reports should be in the [. . .] OPP office. My brother took his own life [. . .] and we are trying to find some answers.

The Ministry located a number of responsive records and issued a decision letter denying access to them, in their entirety, claiming the application of the discretionary exemptions in sections 14(1)(l) (facilitate the commission of a crime) and 14(2)(a) (law enforcement report); as well as the mandatory exemption in section 21(1) (personal privacy), with reference to the presumptions in sections 21(3)(a) and (b), and the factor in section 21(2)(f). The Ministry assigned record numbers 1 to 5 (9 pages in all) to the records, and advised the requester to contact the Coroner's office in order to obtain access to other records that related specifically to the sudden death of her brother, pursuant to section 18(2) of the *Coroner's Act*.

The requester (now the appellant) appealed the decision.

During mediation, the appellant clarified that she is seeking access to any Ontario Provincial Police (OPP) reports prepared for the period between January 1, 2007 and January 4, 2008 relating to her deceased brother. The Ministry conducted a further search for additional records and located Records 6 to 9, totalling 22 pages. Following notification of an affected person pursuant to section 28 of the *Act*, it issued a supplementary decision letter denying access, in their entirety, to Records 1 to 5 (pages 1 – 9) and 9 (page 31); while granting partial access to Records 6 (pages 10 – 11), 7 (pages 12 – 29) and 8 (page 30). The undisclosed information was withheld pursuant to sections 14(1)(l) and 21(1), while other portions were claimed to be not responsive to the request, as framed. As the supplementary decision supersedes the initial decision, a result of this decision, section 14(2)(a) is no longer at issue in this appeal.

The appellant received the records and parts of records that were disclosed by the Ministry and advised this office that she was not satisfied with the extent of the information disclosed and wished to continue with the appeal. However, the appellant stated that she was not interested in pursuing access to any information for which the Ministry claimed the application of section 14(1)(l). Accordingly, the information subject to that exemption claim is no longer at issue in this appeal. The appellant also advised that she was not interested in pursuing access to any information that the Ministry claims is non-responsive to her request, which was described by the Ministry in its decision letter as "printing or administrative information." In addition, the appellant indicated that she is not seeking access to the personal information of any individuals who may have been involved with the deceased in a professional capacity.

No further mediation was possible and this appeal was moved to the adjudication stage of the appeal process, in which an adjudicator conducts an inquiry under the *Act*. Prior to the issuance of the Notice of Inquiry referred to below, the appellant advised this office that she is not seeking

access to the names, addresses and other personal contact details of any individual whose personal information appears in the records.

This office began the inquiry by issuing a Notice of Inquiry inviting the Ministry and one affected party to submit representations on the facts and issues set out in the notice. Both the Ministry and the affected party responded to the Notice with written representations. This office then issued a Notice of Inquiry to the appellant inviting her to submit representations. The non-confidential portions of the Ministry's representations were shared with the appellant, along with a Notice of Inquiry. The affected party's representations were not shared for confidentiality reasons. The appellant submitted representations in response to the Notice. The file was subsequently assigned to me.

RECORDS:

The records at issue are Occurrence Summaries, General Occurrence Reports, Sudden Death Report and Supplementary Occurrence Reports. Following is an Index of the Records:

| Record Number | Page numbers | Description | Decision | Exemptions |
|---------------|--------------|---------------------------------|----------|------------|
| 1 | 1-3 | Occurrence Summary | Withheld | 21(1) |
| 2 | 4 | Occurrence Summary | Withheld | 21(1) |
| 3 | 5-6 | General Occurrence Report | Withheld | 21(1) |
| 4 | 7 | General Occurrence Report | Withheld | 21(1) |
| 5 | 8-9 | General Occurrence Report | Withheld | 21(1) |
| 6 | 10-11 | Occurrence Summary | Partial | 21(1) |
| 7 | 12-29 | Homicide/Sudden Death Report | Partial | 21(1) |
| 8 | 30 | Supplementary Occurrence Report | Partial | 21(1) |
| 9 | 31 | Supplementary Occurrence Report | Withheld | 21(1) |

DISCUSSION:

PRELIMINARY MATTER

Having carefully reviewed the records that the Ministry has identified as responsive to the request, I note that page 16 of Record 7 indicates that two additional responsive records, which are referred to under the heading "Statements," exist. These records were not previously identified as responsive by the Ministry and were not provided to this office. In my view, this raises the issue whether the Ministry has conducted a reasonable search for records as required by section 24.

The additional records are clearly identified in Record 7 and no explanation has been offered by the Ministry for its failure to include them in the group of records it identified as responsive and subsequently provided to this office. In these circumstances, I find that the Ministry has not conducted a reasonable search for responsive records in this appeal. As a result, I have decided to order the Ministry to conduct a further search for additional records that may be responsive to the request and to provide the appellant with a decision letter respecting access to these and any other records identified as a result of such searches.

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. Personal information is defined in section 2(1).

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.)].

Representations and Analysis

The Ministry submits that the records contain the personal information of the affected person and other identifiable individuals, as well as the deceased within the meaning of the definition of that term in section 2(1) of the *Act*. Neither the appellant nor the affected person submitted representations that specifically address this issue.

Having reviewed the records, I find that all contain information that qualifies as personal information, including:

- the age, sex and marital or family status of the deceased, family members and witnesses (paragraph (a));
- the medical, psychiatric and employment history of the deceased, family members and witnesses (paragraph (b));
- the address and telephone number and other contact details of the deceased, witnesses or family members (paragraph (d));
- the personal opinions or views of witnesses is their own personal information except as they relate to other individuals (paragraph (e));
- the views or opinions of witnesses about other individuals is the personal information of those other individuals (paragraph (f)); and,
- the names of individuals where they appear with other personal information relating to them (paragraph (h)).

Based on my review of their contents, I conclude that all of the records contain personal information relating to the deceased. In addition, all of the records, except for Records 8 and 9, contain personal information relating to the affected person. Records 1, 3, 5, 6 and 7 also contain personal information relating to other identifiable individuals who are family members, friends of the deceased and other witnesses.

As noted above, the appellant has advised this office that she is not seeking access to any names and contact details relating to any individuals, other than the deceased, whose personal information may be contained in the records. I have, therefore, removed this personal information from the scope of the appeal, and have identified the places in the records where it appears. These portions are highlighted in a copy of the records provided to the Ministry with this order, and they are not to be disclosed.

In the unique circumstances of this case I find, with one exception, once the identifying information relating to the individuals who are identified in the records has been removed, as requested by the appellant, the information that remains no longer qualifies as their personal information. I specifically find that it is not reasonable to expect that any individuals could be identified solely from the information remaining, once their names and other identifying information has been severed from the records.

However, in my view, it is not possible to remove through severance the identifying information and contact details that relate to the affected person in such a way as to render her unidentifiable. Therefore, despite the severances of the name and contact details relating to other individuals that I will order below, I conclude that there remains other information that relates to the affected person and which is properly identified as her personal information. I will consider below whether this personal information is exempt from disclosure under section 21(1).

In addition, I find that the information that qualifies as the personal information of the deceased in Records 2, 3, 6 and 7 is inextricably intertwined with the personal information of the affected person so that it is not possible to sever the personal information of the affected person from the records in a way that would allow the disclosure of his personal information, only. In the unique circumstances of this case, therefore, I conclude that information in Records 2, 3, 6 and 7 which qualifies as the personal information of the deceased also qualifies as the personal information of the affected person.

Finally, the records contain information relating to the names and contact details of a number of individuals who were involved with the deceased in their professional or official capacity. Record 6 also contains information relating to the sex and dates of birth of some of these individuals. Pursuant to section 2(3) cited above, the names and contact details of these individuals does not qualify as personal information. However, the information relating to the sex and their dates of birth of these individuals, which is unrelated to their professional and official responsibilities, qualifies as their personal information pursuant to paragraph (a) of the definition. As noted above, the appellant is not seeking access to this information and I will, accordingly, not address it further in this order. This information should not be disclosed.

PERSONAL PRIVACY

Where a requester seeks 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 paragraphs (a) to (f) of section 21(1), it is not exempt from disclosure under section 21.

The only exception that could apply is section 21(1)(f), which applies where disclosure would not constitute an unjustified invasion of personal privacy. The factors and presumptions in sections 21(2), (3) and (4) help in determining whether disclosure would or would not be an unjustified invasion of privacy under section 21(1)(f).

Section 21(3)

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 one of the exceptions in 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].

Section 21(3)(b) states:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where 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;

Even if no criminal proceedings were commenced against any individuals, section 21(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of law [Order P-242].

The Ministry states that all of the responsive records at issue were prepared as a result of investigations into possible violations of the *Criminal Code*. The affected party and the appellant did not make any representations on this issue.

Having reviewed the records and the Ministry's representations, I find that all of the records were compiled and are identifiable as part of various investigations by the OPP into possible violations of the *Criminal Code*. Therefore, I find that the presumption in section 21(3)(b) applies to the personal information contained in the records. As a result, the disclosure of this information is presumed to constitute an unjustified invasion of privacy. Accordingly, I find that the disclosure of the personal information contained in the records is presumed to constitute an unjustified invasion of personal privacy and is, therefore, exempt from disclosure under the mandatory exemption in section 21(1). I will now address whether the exception contained in section 21(4)(d) applies to the personal information found to be exempt under section 21(1), as argued in her representations by the appellant.

Section 21(4)(d)

If any of paragraphs (a) to (d) of section 21(4) apply, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 21(1). The appellant submits that because of her relationship with the deceased person and the circumstances surrounding the creation of the records at issue, the compassionate grounds exception contained in section 21(1)(4)(d) is relevant in the circumstances of this appeal.

Section 21(4)(d) 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. It 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.

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

The application of section 21(4)(d) 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?

[Orders MO-2237 and MO-2245]

As noted above in my discussion of personal information, I have found that the records contain information relating to the deceased person which also qualifies as the personal information of the affected party. Previous orders have found that where this is the case, the “circumstances” to be considered, referring to question 3 above, would include the fact that the personal information of the deceased is also the personal information of another individual or individuals. While the factors and circumstances referred to in section 21(2) may provide assistance in this regard, the overall circumstances must be considered and weighed in any application of section 21(4)(d) [Order MO-2237].

Previous orders have also found 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 is to determine whether, “in the circumstances, disclosure is desirable for compassionate reasons” [Order MO-2245].

In Order MO-2237, Assistant Commissioner Brian Beamish considered the interpretation of section 14(4)(c) (the municipal *Act* equivalent to section 21(4)(d)). After reviewing the legislative history of the provision, 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. See also Orders MO-2245 and MO-2387.]

I will adopt the approach taken in Orders MO-2237, MO-2245 and MO-2387 in determining whether section 21(4)(d) applies to the personal information at issue here.

Representations and Analysis

As previously stated, during the inquiry stage of this appeal, portions of the Ministry's representations, and all of the affected person's submissions, were withheld from the appellant due to confidentiality concerns. As a result, I cannot disclose them in this order. However, in arriving at my conclusions I have taken into account both the confidential and non-confidential portions of these representations, as well as those of the appellant.

The Ministry argues that the records disclosed to the appellant are sufficient to meet the requirements of section 21(4)(d) because these records provide the appellant with a detailed, factual knowledge of the circumstances of the deceased's death. It claims that it has recognized the compassionate need expressed by the appellant, as is required under section 21(4)(d). Further, the Ministry argues that disclosing all of the personal information in the records would demonstrate a distinct lack of compassion towards the affected person and other witnesses who have opposed or not consented to the disclosure of their personal information to the appellant.

The Ministry states that the appellant has not provided any information as to why section 21(4)(d) applies, and that in the absence of evidence from the appellant that supports the application of the section, it would be "reckless and in contravention of third party privacy rights to disclose any of the exempted records." With respect to the privacy rights of the affected person, the Ministry provided confidential representations which I am unable to elaborate on in this order. I have carefully considered those representations and have taken them into account in arriving at my decision. I have also carefully reviewed the representations submitted by the affected person and find them to be equally compelling to those submitted by the appellant. The affected person indicates that there exist compelling reasons for not disclosing the personal information contained in the records to the appellant because of the nature of the relationship between the parties.

The appellant's representations merely state that the disclosure is requested solely for reasons of compassion for herself and other family members.

Records 1, 4 and 5

As noted, these records contain the personal information of the deceased and the affected party. However, given the context surrounding their creation, the time periods in which these records were prepared and the nature of the information which they contain, I find that disclosure of the personal information of the deceased and the personal information of the affected party in Records 1, 4 and 5 would not serve to shed any light on the circumstances surrounding the death of the appellant's brother, particularly since they predate by a wide margin the date of the brother's death. The information contained in these records is qualitatively different from the information that is contained in the other records at issue in this appeal and I give significant

weight to the fact that it is highly sensitive and was provided by the affected party and other individuals in confidence. For these reasons, disclosure is not “desirable for compassionate reasons, in the circumstances” and, as a result, section 21(4)(d) does not apply to it. Accordingly, no further information in Records 1, 4 and 5 will be disclosed as a result of this order.

Records 2 and 3

I have found above that these records contain the personal information of the affected party, as well as that of the deceased. In determining whether the disclosure of the personal information of the deceased is desirable for compassionate reasons, I will apply the approach taken in Order MO-2237, considering all the circumstances of the appeal, including the fact that the information qualifies as the personal information of both the deceased and the affected party.

The appellant has indicated that she is not interested in seeking access to the name and personal contact details of any individuals. Accordingly, I have removed from the scope of the appeal the affected person’s name and contact details where they appear in these records. In addition, the vast majority of the personal information that remains undisclosed that pertains to the affected party in Records 2 and 3 does not relate to the circumstances surrounding the death of the appellant’s brother. Rather, this information includes personal information relating to the health, age and date of birth of the affected party, and sensitive details about the relationship between the deceased and the affected party (section 21(2)(f)) which chronicles events that significantly pre-date the time period of the brother’s death.

I have also considered the fact that some of the personal information contained in Records 2 and 3 was supplied to the OPP by the affected person in confidence (section 21(2)(h)). In addition, it appears that much of the information in these records is contradicted by other evidence and information in the records, raising the likelihood that it may not be entirely accurate (section 21(2)(g)). I also find that the disclosure of certain portions of Records 2 and 3 may unfairly damage the reputation of those who are referred to in them (section 21(2)(i)).

Weighing in favour of a finding that section 21(4)(d) applies is the fact that some of the sensitive personal information is no longer at issue because the appellant removed from the scope of the appeal the names and personal contact information about persons other than the deceased. Also weighing in favour of disclosure is the appellant’s sincere desire to learn more about the circumstances surrounding her brother’s death, including information about his state of mind in the months leading up to his death.

Having considered all of these circumstances, I find that the disclosure of much of the personal information remaining at issue, particularly where it relates to the affected person, is not desirable for compassionate reasons within the meaning of section 21(4)(d), particularly due to the nature of the relationship between the affected person and the appellant. Accordingly, I do not agree that the disclosure of the intermingled personal information in Records 2 and 3 that relates to both the deceased and the affected person would be desirable for compassionate reasons, as contemplated by section 21(4)(d).

Moreover, Records 2 and 3 relate to events involving the deceased person and the affected person that pre-date his death. They describe sensitive personal details of the relationship

between these individuals I am not satisfied that there exists sufficient compassionate grounds to merit its disclosure to the appellant. I find that the privacy interests of the affected person strongly outweigh any interest the appellant may have in these records, particularly since they do not relate to the events surrounding the deceased's death. Accordingly, I find that Records 2 and 3 remain exempt from disclosure under section 21(1) and should not be disclosed.

Records 6 and 7

Record 6 is a two-page occurrence summary prepared by the Police following the conclusion of their investigation into the appellant's brother's death. Record 7 is a 15-page Sudden Death report which was also completed by the officers who investigated the circumstances surrounding the death. Each of these documents contain narrative descriptions of the events that led up to the death and the involvement of a number of individuals, civilian and police, in the investigation. These records were created specifically to describe the circumstances surrounding the death of the appellant's brother and contain a great deal of detail and personal information relating mainly to him, but also to other identifiable individuals, including the affected person.

In my view, the disclosure of much of the personal information contained in these records to the appellant would be desirable for compassionate reasons. They describe the circumstances surrounding the death and record the events leading up to it. The disclosure of this information will provide the appellant with a great deal of information about her brother's death and may be helpful to her in achieving some degree of closure about these tragic circumstances, as contemplated by section 21(4)(d).

Pages 18 to the middle of page 21 of Record 7, recount events that pre-date those surrounding the death. They reveal sensitive information about the appellant's brother and the affected person. In my view, the disclosure of this information would not be desirable for compassionate reasons. Because they do not describe the events that immediately precede the death, I find that their disclosure is not necessary to ensure that the appellant is apprised of the circumstances surrounding her brother's death. Accordingly, I find that section 21(4)(d) has no application and this information remains exempt under section 21(1).

I conclude that the disclosure of the remainder of the contents of Records 6 and 7, severing the information that is non-responsive or that which was removed from the scope of the appeal by the appellant, would be desirable for compassionate reasons and I will order that it be disclosed. While some of the information relates to the affected person, I find that the need to ensure that the appellant is well-informed about the circumstances surrounding the death of her brother outweigh the affected person's concerns about privacy protection about this particular information. I have highlighted those portions of Records 6 and 7 which are not to be disclosed to the appellant.

Records 8 and 9

Only a portion of Record 8 was withheld from the appellant and Record 9 was withheld in its entirety. I have already found that these records contain the personal information of the deceased, who is the brother of the appellant, and that the appellant qualifies as a close relative. Therefore, the first and second requirements for the application of section 21(4)(d) have been met.

Records 8 and 9 do not contain the affected person's personal information.

The personal information of the deceased in Record 8 relates to his medical, psychiatric or psychological condition. It is clear from the review of these records that the OPP considered the deceased's medical information was a relevant circumstance in his death. Both the appellant and the affected party submit that the family members of the deceased were aware of the deceased's medical condition and I accept this evidence. In these circumstances, I find that the disclosure of the deceased's personal information contained in Record 8 will assist the appellant in better understanding the circumstances surrounding the death. In my view, disclosure is, in the circumstances of this appeal, "desirable for compassionate reasons" as contemplated by section 21(4)(d).

The personal information of the deceased in Record 9 includes information about the deceased's personal history relating to his medical condition, and information of the kind that is present in Record 8 is also present in Record 9. In my view, disclosure of this information is also "desirable for compassionate reasons" under section 21(4)(d). As a result, I find that the exception in section 21(4)(d) applies to the personal information contained in Records 8 and 9 and that they are not, therefore, subject to the mandatory exemption in section 21(1).

ORDER:

1. I uphold the decision of the Ministry to withhold Records 1, 2, 3, 4 and 5 in their entirety, and those portions of Records 6 and 7 which are highlighted on the copy provided to the Ministry with this order.
2. I order the Ministry to disclose to the appellant those portions of Records 6 and 7 which are not highlighted on the copy of these records provided to the Ministry with this order, along with a copy of Records 8 and 9 in their entirety, by **October 14, 2009** but not before **October 9, 2009**.
3. I order the Ministry to conduct a further search for records responsive to the request. In particular, the Ministry is to conduct a search for those records referred to in Record 7. Following the completion of its search, the Ministry is to provide the appellant with a decision letter in accordance with sections 26, 28 and 29 of the *Act*, treating the date of this order as the date of the request.
4. In order to verify compliance with this order, I reserve the right to require the Ministry to provide me with a copy of the records disclosed to the appellant pursuant to order provision 2.

Original signed by: _____
Donald Hale
Adjudicator

September 9, 2009 _____