



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

# **ORDER MO-2515**

## **Appeal MA09-123**

### **Halton Regional Police Services Board**



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## **BACKGROUND:**

The requester in this appeal is the daughter of a man (the deceased), who passed away sometime during the early part of the month of September, 2008. According to the requester, the deceased was believed to have been suffering from a medical condition that was known to cause paranoia and fear. It was known that the deceased was alive and that he made a 911 call on September 3, 2008, to which the police responded. The deceased's body was found on September 17, 2008.

On November 14, 2008, the requester submitted a request to the Halton Regional Police Services Board (the Police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for the following information:

I am requesting all information pertaining to [the deceased] calling 9-1-1 on Sept 3 at 7:03 a.m. I am requesting all information pertaining to the call by emergency personnel to [the deceased's] home ... This [includes] 9-1-1 tape, officers' notes [and] files and [I] would like to know what the officer observed during this visit.

The Police issued a decision letter in December, 2008, in which they rephrased the request as follows:

You have requested access to a copy of the sudden death occurrence report [specific number], investigating officer's notebook entries. You have also requested access to the 911 call pertaining to incident [different specific number], dated September 3, 2008.

In their decision, the Police indicated that they had located responsive records, and referred to section 14(4)(c) of the *Act*. Under that provision, 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.

After considering the application of section 14(4)(c) in the circumstances of this request, the Police granted the requester access to a copy of the 911 call made on September 3, 2008, as well as partial access to an occurrence report and police officers' notebook entries, dated September 17, 2008, the date on which the deceased was found.

The requester subsequently clarified with the Police that she was seeking the occurrence report and police officers' notes regarding the circumstances around the deceased's 911 call on September 3, 2008. The Police then issued a new decision on access.

## **NATURE OF THE APPEAL:**

The Police indicated that they had located the notes of the two officers who responded to the 911 call. They denied the requester access to these records pursuant to the mandatory exemption in section 14(1) (personal privacy) of the *Act*, read in conjunction with the factors in sections

14(2)(f) (highly sensitive) and 14(2)(i) (unfair damage to reputation), and the presumptions in sections 14(3)(a) (medical history) and 14(3)(b) (investigation into violation of law).

The decision letter further stated that the Police were denying access to 10-codes, patrol zone information and statistical codes pursuant to the discretionary exemption in sections 8(1)(e) (life or physical safety) and 8(1)(l) (commission of an unlawful act or control of crime) of the *Act*. Finally, they informed the requester that no occurrence report was produced for the incident on September 3, 2008.

The decision letter did not indicate whether or not the Police considered the application of section 14(4)(c) in the circumstances of the clarified request.

The requester (now the appellant) appealed the Police's decision to this office, which assigned a mediator to assist the parties in resolving the issues in this appeal. During mediation, the appellant stated that the only records to which she is seeking access are the police officers' notes relating to the September 3, 2008 incident. She confirmed that she is not seeking access to the information withheld under sections 8(1)(e) and (l), nor is she seeking information that is not responsive to her request.

The appellant also raised the application of section 14(4)(c) of the *Act* to the information relating to the September 3, 2008 incident.

This appeal was not resolved in mediation and was moved to the adjudication stage of the appeal process. The adjudicator previously assigned to this file sent a Notice of Inquiry, setting out the facts and issues on appeal, to the Police, initially. The Police submitted representations in response.

After reviewing these submissions, the previous adjudicator sent the Notice of Inquiry to the appellant, along with the non-confidential representations of the Police. The appellant also submitted representations in which she reiterated the compassionate reasons for her request. The previous adjudicator then moved this file into the order stage of the process.

The file was subsequently transferred to me to complete the adjudication process.

## **RECORDS:**

The records at issue are the notes of two police officers (portions of 5 pages in total).

## **DECISION:**

I have reviewed the file and the submissions provided by both parties, and find that the submissions made by the Police do not persuade me that disclosure of the records at issue is not desirable for compassionate reasons. After considering all of the evidence before me, I conclude that the exception to the personal privacy exemption in section 14(4)(c) applies in the circumstances of this appeal. Accordingly, I find that the records at issue should be disclosed to the appellant. I have set out my reasons below.

## **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 part, to mean recorded information about an identifiable individual, including 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 (paragraph (h) of the definition of personal information in section 2(1) of the *Act*).

The Police submit that the records contain only the personal information of the deceased, taken while this individual was still living.

The two records at issue comprise the notes made by two police officers who responded to a 911 call made by the deceased. I agree with the Police that they contain only the personal information of the deceased. The records do not contain any information about the appellant.

### **PERSONAL PRIVACY**

#### **General principles**

Where a requester seeks personal information of another individual, section 14(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 14(1) applies. If the information fits within any of paragraphs (a) to (f) of section 14(1), it is not exempt from disclosure under section 14. It appears that the only exception that could apply in the circumstances of this appeal is section 14(1)(f).

The factors and presumptions in sections 14(2), (3) and (4) help in determining whether disclosure would or would not be an unjustified invasion of privacy under section 14(1)(f). 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 14. If the presumptions in 14(3) do not apply, then a consideration of the factors in section 14(2) is necessary.

A presumed unjustified invasion of personal privacy under section 14(3) cannot be rebutted by the factors set out in section 14(2). A presumption can, however, be overcome if the personal information is found to fall under section 14(4) of the *Act* [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767]. If any of paragraphs (a) to (c) of section 14(4) apply, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 14. As I indicated above, the appellant has raised the application of section 14(4)(c) of the *Act*.

In this case, the Police have raised the application of the section 14(3)(b) presumption. Before I turn to the possible application of section 14(4)(c), I will consider whether the presumption in section 14(3)(b) applies to the personal information contained in the records at issue.

### **Section 14(3)(b) – investigation into possible violation of law**

Section 14(3)(b) 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;

Even if no criminal proceedings were commenced against any individuals, section 14(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of law [Orders P-242, PO-1849].

The Police state that section 14(3)(b) applies to the records at issue as they were created and compiled as part of an investigation into a possible violation of law. In this regard, the Police note that the Police were called to respond to a complaint of trespass by “an unwanted person”, and to investigate possible criminal activity. According to the Police, “[t]he records clearly reflect and describe the actions taken by the police officers involved in investigating a complaint for the purpose of determining whether a crime had been committed.” The Police indicate further that they rely on my findings in Order M-1092, in which I state, “[d]espite the fact that a determination was made that no criminal act had occurred, the investigation was conducted with a view towards determining whether or not this was the case, and this is sufficient to bring records within the presumption.”

### ***Findings***

Based on my review of the records at issue and the submissions made by the Police, I am satisfied that the personal information in the records was compiled and is identifiable as part of an investigation into a possible violation of law. Accordingly, I find that the presumption in section 14(3)(b) applies and the disclosure of the information at issue in the records is presumed to constitute an unjustified invasion of personal privacy. I now turn to consider whether the exception in section 14(4)(c) applies to this information.

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

The appellant claims that section 14(4)(c) applies in the circumstances of this appeal. This 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.

The application of section 14(4)(c) requires a consideration of the following questions, all of which must be answered in the affirmative in order for the section to apply:

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

[Orders MO-2237 and MO-2245]

I found above, that the records contain the personal information of the deceased. 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; (“proche parent”).

The Police agree that the first two parts of the test have been met in that the records contain the personal information of an individual who is now deceased, although they note that the records were made in regards to an incident that occurred when the deceased was living, and that the appellant, as the daughter of the deceased, meets the definition of close relative. I concur.

With respect to the third part of the test, the Police examine several dictionary definitions of “compassionate” and the meaning of “closure” and state:

Prior requests received by this institution for a ‘compassionate reason’ in the past have always indicated the interest of the requester lies with the circumstances surrounding the death of their loved one, to come to terms with the sad event and move on with their lives. This principle has been fulfilled with the first request, whereby access was granted to the sudden death report, along with the investigating officer’s notebook entries. The point is further emphasized by Assistant Commissioner Brian Beamish in Orders MO-2237 and MO-2245, “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 in the original]

Under the heading “Other Considerations” in their submissions, the Police state:

At this point it is worth mentioning that this request for access to pre-death information about a deceased individual’s contact with a law enforcement agency will be precedent setting. This institution has received many requests for

information about the circumstances surrounding the death of loved ones in order for close relatives and next of kin to receive 'closure.' However this request constitutes information about the history of a deceased person prior to their death, which was clearly not known. This institution has a duty to protect the integrity and reputation of the deceased who had a certain lifestyle and medical status that warrants privacy as opposed to disclosure.

During mediation, the mediator shared some of the details of the appellant's initial appeal letter and amongst others, the following were the reasons provided for seeking access to the records in question:

1. The family believe that the deceased passed away very shortly after the police visit;
2. The family believe that the officers who attended were the last people to have seen the deceased;
3. The family want to identify the circumstances surrounding the death;
4. The family want to know how the deceased was doing during his last days, they want to piece together the last few days of the deceased.

In response to this information provided during mediation (and reiterated in the appellant's submissions), the Police indicate that there is conflicting evidence regarding when the deceased died, and whether the attending officers were the last people to have seen the deceased alive. They submit that:

To release the investigating officer's notebook entries pertaining to an incident prior to the death of the deceased would not be desirable for 'compassionate reasons' as the circumstances surrounding the death of her father has already been disclosed to the appellant. The information that this institution is withholding is the history relating to the deceased's health and circumstances preceding his death which is unrelated to the circumstances surrounding the death.

The disclosure of notes made at the scene of an incident which occurred thirteen (13) days prior to the discovery of the deceased will not assist the family in trying to 'piece together the last few days of the deceased' as the date of death is still undetermined.

In her submissions (which reiterated the information provided in her letter of appeal), the appellant noted that, "[i]t is believed by the coroner when found on September 17/08 that [the deceased] had been deceased for approximately 2 weeks which dates back to September 3 the day the officers were present in [the deceased's] home."

The appellant's letter of appeal describes the Coroner's opinions regarding the physical and mental state of the deceased and the state of his residence at the time that he was found and expresses frustration that she is unable to obtain information regarding the visit by police officers in response to his 911 call within a short period of time prior to his estimated death. In her representations she states:

I have been denied any information that exists from emergency personnel that reported to [the deceased's] home September 3/08. It is important for me to understand what occurred during this visit and provide me with closure and an understanding of why they left my father without reporting his situation to his family nor his landlord, nor did they transport him to the hospital.

### *Findings*

In Orders MO-2237 and MO-2245, Assistant Commissioner Brian Beamish considered the interpretation of section 14(4)(c). After reviewing the legislative history, he came to the following conclusion, as stated in both Orders MO-2237 and MO-2245:

...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.

In Order MO-2237, Assistant Commissioner Beamish noted that the personal information about the deceased in that case was mixed with information that also qualifies as that of another individual. Where this is the case, the “circumstances” to be considered would include the fact that the personal information of the deceased is also the personal information of another individual or individuals. He found that the factors and circumstances referred to in section 21(2) may provide assistance in this regard, but the overall circumstances must be considered and weighed in any application of section 14(4)(c). In the current appeal, the records contain only the personal information of the deceased, and a similar analysis is not necessary.

However, the Assistant Commissioner went on in his analysis to also consider the privacy interests of the deceased individual, and engaged in a weighing of factors relevant to the issue whether disclosure is “desirable for compassionate reasons.” In my view, that discussion is relevant to the circumstances of the current appeal, and is the approach I will take in assessing this issue. He stated:

In assessing the relevant circumstances, including the appellant’s need to receive this information to gain a better understanding of the circumstances of her daughter’s death, as well as her daughter’s right to privacy, **I give significant weight to the fact that much of her daughter’s personal information in this record includes the affected party’s observations about the deceased’s health and circumstances prior to her death.** In my view, this is the appellant’s daughter’s sensitive personal information. However, in circumstances where the deceased is determined to have died of natural causes and grieving relatives seek access to information about the circumstances of the death, I also attribute



significant weight to the appellant's need for this information as part of her grieving process. I have also considered the appellant's perception that the **information that has been disclosed to her to date has not provided her with clarity regarding the circumstances of death as a relevant circumstance favouring disclosure.** I give significant weight to the fact that the appellant is seeking information for the purposes of arriving at an accurate diagnosis or cause of death of her daughter. I also give significant weight to the relationship that existed between the appellant and her daughter and the fact that the appellant appears to have been involved in her daughter's life despite the fact that at the time of her death she did not reside at the family home. There is no evidence that the appellant's daughter was estranged from the family.

In addition, as the Assistant Commissioner noted in Order MO-2245, 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."

In assessing the relevant circumstances of the current appeal, I give significant weight to the fact that the records at issue contain information about the deceased's health and physical state within a short period of time prior to his death. This information sheds some light on the deceased's circumstances shortly before his death (see: Order MO-2387 for a discussion of circumstances preceding an individual's death that provide contextual and circumstantial information to assist grieving loved ones in coming to terms with that death). In my view, the September 3 incident was sufficiently proximate to the estimated date of death that it is reasonably connected to the events surrounding his death. I also attribute significant weight to the appellant's need for this information as part of her grieving process. Similar to the situation in Order MO-2237, I have also considered the appellant's perception that the information that has been disclosed to her to date has not provided her with clarity regarding the circumstances of death as a relevant circumstance favouring disclosure. I do not agree with the Police that providing the appellant with the sudden death report, along with the investigating officers' notebook entries made on the day the deceased's body was found is sufficient to enable the appellant to understand the circumstances surrounding the death of her father, in order to "come to terms with the sad event and move on with [her life]".

I attribute very little weight to the argument put forth by the Police that disclosure of notes made at the scene of an incident which occurred 13 days prior to the discovery of the deceased will not assist the family in trying to 'piece together the last few days of the deceased' as the date of death is still undetermined. In the circumstances, I accept the appellant's evidence regarding her need to understand what happened on the day the Police responded to her father's 911 call made in such close proximity to his estimated time of death. Contrary to the position taken by the Police, I find that the records at issue contain information regarding the events surrounding the death that would assist family members in better understanding the death.

Although not addressed by the Police in their submissions, I note that the appellant has raised a number of concerns about the manner in which the police officers responded to her father. She

does not indicate that she wishes to pursue a complaint or other legal action upon receipt of the information she seeks. Regardless of any motivation other than for compassionate reasons, as stated by Bernard Morrow in Order MO-2404, “the prospect of legal action should not preclude the disclosure of personal information where it is otherwise desirable for compassionate reasons.” Accordingly, I give very little weight to any additional use the appellant might wish to put the information she receives regarding the circumstances surrounding her father’s death.

Having considered all the circumstances surrounding this request and appeal, I find that disclosure of the deceased’s personal information to the appellant is “in the circumstances, desirable for compassionate reasons.” Accordingly, I find that section 14(4)(c) applies to the information at issue in this appeal, and the disclosure of this information does not constitute an unjustified invasion of privacy. As a result, section 14(1) does not apply to the records at issue and they should be disclosed to the appellant.

**ORDER:**

1. I order the Police to disclose the records at issue to the appellant by **May 5, 2010**.
2. 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 1.

Original Signed by: \_\_\_\_\_  
Laurel Cropley  
Adjudicator

\_\_\_\_\_ April 14, 2010