

Information and Privacy Commissioner,  
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,  
Ontario, Canada

---

## **ORDER MO-2907**

Appeal MA12-239

Ottawa Police Services Board

June 27, 2013

**Summary:** The appellant submitted a request to the police under the *Act* for a complete copy of a police report relating to the death of her daughter. The police disclosed large portions of the record to the appellant and withheld the remaining portions pursuant to section 38(b) (personal privacy). The appellant appealed this decision relying on the exception to section 14(1) found in section 14(4)(c) (compassionate reasons). In this order, the adjudicator finds that the police balanced the competing interests of the appellant in accessing the record at issue for compassionate reasons and the privacy interests of two other grieving parties. She finds that, in the circumstances, disclosure is not desirable for compassionate reasons and upholds the decision of the police to withhold portions of the record pursuant to section 38(b).

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, section(s) 2(1) definition of personal information, 14(2)(e), (f), 14(3)(b), 14(4)(c), 38(b).

### **OVERVIEW:**

[1] The appellant submitted a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the Ottawa Police Services Board (the police) for a complete copy of an identified report relating to the death of her daughter.

[2] The police located a 30-page general occurrence report (the report). Prior to issuing its decision, the police notified two affected parties, in accordance with section

21 of the *Act*, seeking their views regarding disclosure of the report. The police subsequently issued an access decision to the appellant granting partial access to the responsive record. The police denied access to portions of the report pursuant to the discretionary exemptions at section 38(a), in conjunction with section 8(1)(i) (discretion to refuse requesters own information/law enforcement), and section 38(b), with reference to the presumption at section 14(3)(b) (personal privacy) of the *Act*.

[3] The appellant appealed the police's decision.

[4] During the mediation process, the mediator notified the two affected parties to determine whether they would consent to disclose information contained in the record at issue that relates to them. The affected parties did not consent to the disclosure of any information contained in the record at issue that relates to them.

[5] Also during mediation, the appellant confirmed that she is not pursuing access to the information the police denied access to under section 8(1)(i) and section 38(a) of the *Act*. Accordingly, this information, which appears on pages 14, 15, 17 and 18 and these exemptions, are no longer an issue. The appellant also indicated that she is not pursuing access to the information the police denied access to under section 14(1) of the *Act* in pages 1, 2, 3 and 5. Accordingly, this information is not at issue in the appeal.

[6] The appellant advised that she is relying on section 14(4)(c) of the *Act* (compassionate reasons) in pursuing access to the remaining severed portions of the report.

[7] Further mediation was not possible and the file was moved to the adjudication stage of the appeal process. I sought representations from the police and two affected parties. The police and one affected party responded to the Notice of Inquiry that was sent to them. The second affected party could not be contacted at the addresses and telephone numbers provided during the earlier stages of this request and appeal.

[8] Prior to submitting their representations, the police issued a supplementary access decision in which they granted additional access to portions of the record at issue. The remaining information continues to be withheld pursuant to the exemptions cited above. The appellant indicated that the additional disclosure does not satisfy her request.

[9] I then sought and received representations from the appellant. The representations of the police and affected party were shared with her in accordance with section 7 of the IPC's *Code of Procedure and Practice Direction 7*.

## **RECORD:**

[10] The record remaining at issue comprises pages 7, 8, 10, 11, 12, 14 in part, 15 in part, 18 in part, 20 and 28 of the report.

## **ISSUES:**

- A. Does the record contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?
- B. Does the discretionary exemption at section 38(b) apply to the information at issue?
- C. Did the police exercise their discretion under section 38(b)? If so, should this office uphold the exercise of discretion?

## **DISCUSSION:**

### **A. Does the record contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?**

[11] 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. Under section 2(1) of the *Act*, "personal information" is defined, in part, to mean recorded information about an identifiable individual.

[12] 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.<sup>1</sup> Nevertheless, 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.<sup>2</sup>

[13] To qualify as personal information, it must also be reasonable to expect that an individual may be identified if the information is disclosed.<sup>3</sup>

[14] The police submit only that the record contains personal information of other individuals who did not consent to its release. The affected party also indicates that the record contains his personal information. The appellant states that she knows who the

---

<sup>1</sup> Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

<sup>2</sup> Orders P-1409, R-980015 and PO-2225.

<sup>3</sup> Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

affected parties are and submits that “anything that is said that identifies them is a moot point as I already know that they talked with the investigating officers.” She also believes that the record contains the personal information of her deceased daughter.

[15] The record is a police report relating to their attendance at the home of the deceased daughter, and the investigation into her death. It contains information about the incident and all parties involved or contacted by the police, including background information, personal characteristics, contact information and statements. Having reviewed the record, in its entirety, I find that it contains information about the deceased, and several other identified individuals, including the appellant. Much of the information in the records has been disclosed to the appellant, primarily information about the appellant and the deceased; the portions that remain at issue refer to other individuals and the deceased.

[16] Because the record as a whole contains the appellant’s personal information, the personal privacy analysis will be conducted under section 38(b).

**B. Does the discretionary exemption at section 38(b) apply to the information at issue?**

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

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

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

[20] Sections 14(1) to (4) provide guidance in determining whether the unjustified invasion of personal privacy threshold is met. As I indicated above, the two affected parties contacted by this office did not consent to the disclosure of the personal information at issue. Accordingly, section 14(1)(a) does not apply in the circumstances. The appellant does not argue, and I find that none of the other section 14(1) exceptions applies in the circumstances.

[21] The appellant indicates that her request for information is based on section 14(4)(c) (compassionate reasons) of the *Act*.

**14(4)(c) – compassionate reasons**

[22] 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.

[23] 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”);

[24] Previous orders of this office have taken a “broad and all encompassing approach” in determining whether the disclosure of information is “desirable for compassionate purposes.”<sup>4</sup> I have also taken this approach in the current appeal.

[25] 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?<sup>5</sup>

[26] Personal information about a deceased individual can include 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. The factors and circumstances referred to in section 14(2) and the presumptions in section 14(3) may

---

<sup>4</sup> See: for example, Orders MO-2237, MO-2234, MO-2420, MO-2515 and PO-2850.

<sup>5</sup> Orders MO-2237 and MO-2245.

provide assistance in this regard, but the overall circumstances must be considered and weighed in any application of section 14(4)(c).<sup>6</sup>

[27] 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."<sup>7</sup>

[28] I note that the police have disclosed significant portions of the records to the appellant, initially in response to her request and during the adjudication process. The disclosed portions provide details of the circumstances of the deceased's death. I find that the disclosure of other portions of the records at issue is not desirable for compassionate reasons in the circumstances of this appeal. I am satisfied that this information falls within the presumption at section 14(3)(b). I also find that the factors in section 14(2)(e) and (f) are relevant to this information. Accordingly, I find that the remaining information is exempt from disclosure pursuant to section 38(b) of the *Act*. I have set out the parties' representations and my reasons for these decisions below.

#### *Parts one and two*

[29] The police do not directly address the nature of the appellant's relationship in their representations. The appellant identifies herself as the mother of the deceased. I am satisfied that the appellant fits within the definition of "close relative" as that term is defined above.

[30] Regarding whether the record contains the deceased' personal information, the police state that "though part may be personal information of the appellant's daughter the information consists of the affected person's observations and does not directly relate to the death of the appellant's daughter."

[31] The record, in its entirety, contains information gathered by the police after responding to a 911 call relating to the deceased. As I indicated above, the records pertain to the deceased and the investigation conducted by the police into her death. Accordingly, I find that the first two parts of the section 14(4)(c) test have been met.

#### *Part three*

[32] As I noted above, the factors in section 14(2) and the presumptions in section 14(3) are "circumstances" to take into account in determining whether disclosure of the personal information of the deceased individual is desirable for compassionate reasons.

---

<sup>6</sup> Order MO-2237.

<sup>7</sup> Order MO-2245.

[33] The police take the position that the presumption at section 14(3)(b) (investigation into possible violation of law) applies to the information at issue and argue that section 14(4)(c) does not “mitigate the [exemption] claimed by Section 14(3) of the *Act*.” I will consider this presumption in determining whether disclosure is desirable in the circumstances.

[34] In addition, the affected parties raise the application of section 14(2)(f) on the basis that the information about them in the records is highly sensitive. In addition, one affected party suggests that disclosure of his personal information will unfairly expose him to harm, thus raising the factor favouring privacy in section 14(2)(e). I will also consider these factors in determining the issues in this appeal.

[35] In determining whether disclosure of the personal information in the record is desirable for compassionate reasons, one circumstance that is particularly relevant in this appeal is the relationship of the appellant and the affected parties to the deceased. The appellant is clearly aware of the identities of the two affected parties and requests full disclosure of their information in the record with this knowledge. One affected party is the father of the deceased and the other is the man she was living with at the time of her death (the partner). The dynamics of this appeal are further complicated by the nature of the relationship that the deceased had with her parents and partner and the relationship between the father, the partner and the appellant.

[36] In Order PO-3129, Assistant Commissioner Beamish considered the dynamics of the relationship between a deceased individual and other family members in his consideration of “all the circumstances” surrounding the request in question under section 21(4)(d) of the provincial *Act*<sup>8</sup>. He concluded:

I have carefully considered all the circumstances surrounding this request and appeal, particularly the privacy interests of the affected person and her children. I am particularly mindful of the fact that a psychologist raised concerns with the ministry with regard to the effect that the disclosure of the records may have on the well-being of the affected person’s children. As I found above, the factors in section 21(2)(f) and 21(2)(i) weigh strongly against the disclosure of the information contained in the records.

Furthermore, I agree with the affected person that the *Act* does not restrict the analysis of section 21(4)(d) to the consideration of compassion to the requester alone. Section 21(4)(d) requires that the disclosure be desirable for compassionate reasons in relation to all the circumstances relating to the request. After considering all the circumstances surrounding the request and appeal, I find that the privacy interests of

---

<sup>8</sup> Section 21(4)(d) of the provincial *Act* is identical to section 14(4)(c) of the *Act*.

other individuals, including the affected person and her children, should not automatically yield to the compassionate reasons that may call for full disclosure to the appellant.

However, as the grieving father of the deceased, I do find that the appellant is entitled to disclosure of at least some portions of the records for compassionate reasons. I have carefully reviewed the records in light of the representations submitted by all parties and find that the ministry carefully balanced all of the competing interests, including the compassionate reasons for and against disclosure. The ministry thoroughly considered all the circumstances of the request and the appeal and withheld portions that, if disclosed, could cause serious emotional distress to the affected person and her children. As such, I find that the ministry properly applied the exception to the personal privacy exemption in section 21(4)(d) and uphold its decision.

[37] It is apparent that there are three grieving parties involved in the current appeal and, in considering all of the circumstances in this appeal, I will, in effect, consider whether there are "compassionate reasons" for not disclosing the personal information of the affected parties to the appellant.

14(3)(b): investigation into violation of law

[38] 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;

[39] 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.<sup>9</sup> The presumption can also apply to records created as part of a law enforcement investigation where charges are subsequently withdrawn.<sup>10</sup>

[40] Section 14(3)(b) does not apply if the records were created after the completion of an investigation into a possible violation of law.<sup>11</sup>

---

<sup>9</sup> Orders P-242 and MO-2235.

<sup>10</sup> Orders MO-2213, PO-1849 and PO-2608.

<sup>11</sup> Orders M-734, M-841, M-1086, PO-1819 and PO-2019.



[41] The presumption can apply to a variety of investigations, including those relating to by-law enforcement<sup>12</sup> and violations of the Ontario Human Rights Code.<sup>13</sup>

[42] The police state that the information at issue was collected from the affected parties in order to determine whether there was a violation of law. The police state further that police investigations are confidential "and privileged to the investigative body to maintain fairness and presumption of innocence."

[43] The police express the concern that if they disclose personal information obtained in confidence without consent, these individuals may be reluctant to supply information in the future.

[44] The appellant does not address the presumption at section 14(3)(b), although she states that she has copies of her daughter's medical records and argues that section 14(3)(a)<sup>14</sup> should not apply to it. I note that the police do not rely on the presumption at section 14(3)(a) in the circumstances of this appeal.

[45] I accept the submissions of the police that the information in the record was compiled and is identifiable as part of an investigation into a possible violation of law. The police responded to a 911 call regarding the deceased. They attended at the scene and interviewed witnesses. They also compiled other background information relating to the deceased and others. All of the personal information in the record pertains to these activities.

[46] As I noted above, even though no criminal charges resulted from this police investigation, the presumption only requires that there be an investigation into a possible violation of law. Accordingly, I find that the presumption at section 14(3)(b) applies to the record at issue.

14(2)(f): information is highly sensitive and 14(2)(e): unfair exposure to harm

[47] Sections 14(2)(f) and (e) of the *Act* states:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

- (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;

---

<sup>12</sup> Order MO-2147

<sup>13</sup> Orders PO-2201, PO-2419, PO-2480, PO-2572 and PO-2638.

<sup>14</sup> The presumption at section 14(3)(a) relates to "a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation."

(f) the personal information is highly sensitive;

[48] In order for section 14(2)(e) to apply, the evidence must demonstrate that the damage or harm envisioned by the clause is present or foreseeable, and that this damage or harm would be "unfair" to the individual involved.

[49] To be considered highly sensitive, there must be a reasonable expectation of significant personal distress if the information is disclosed.<sup>15</sup>

[50] The deceased's father consented to partial disclosure of information about him in the record. He objected only to the disclosure of one document that was attached to the report, as it was a private communication between him and his daughter.

[51] The partner has requested that his representations not be shared and, given the very personal comments he has made in them, I agree that they should remain confidential. In order to understand my findings in this order, I will simply note that the partner describes his relationship with the deceased and interactions with the appellant and other individuals. He describes his emotional state at the time of the deceased's death and subsequently.

[52] The appellant refers to e-mail communications she had with the partner following the initiation of her access request. She highlights a portion of the e-mail where the partner refers to being notified about the request. In response to this notification, the partner writes, "Can't say as I'm pleased with that at all. Not sure who would want that, or why, but it's nothing I haven't re-told dozens of times."

[53] The appellant states:

I believe the redacted information will hold the answers to questions I have about the final hours of my daughter's day. Since [the partner] sent me an email (attached) that states he has told his story numerous times, I feel that I should be able to read what he said to the officers on the night of [deceased's death], as I believe that conversation will be as close to the truth as I am ever going to get. Since her [death] the story has evolved and changed and I need to know what was said at the time...

[54] Generally speaking, I find that all of the records can be considered to be highly sensitive since they contain information detailing the particulars of the deceased's death, the circumstances surrounding it and the nature of her personal relationships. I note that the appellant has been provided with the vast majority of the information contained in the record, including information about the location at which the deceased was found, the manner in which her daughter was found and other circumstances

---

<sup>15</sup> Orders PO-2518, PO-2617, MO-2262 and MO-2344.

surrounding the condition of her daughter. The information that has been withheld primarily relates to the personal circumstances of the affected parties and their personal relationships with the deceased. Given the nature of this information, I find that it is highly sensitive and very private. Moreover, I am satisfied that there is a reasonable expectation that the affected persons would experience significant personal distress<sup>16</sup> if these particular portions were disclosed to the appellant. Accordingly, I find that section 14(2)(f) weighs heavily in favour of a finding that the disclosure of the withheld portions of the records would constitute an unjustified invasion of personal privacy.

[55] After reviewing the partner's representations regarding his concerns about disclosure of the intimate details of his relationship with the deceased and others, I am satisfied that disclosure of the withheld portions of the record could reasonably be expected to expose him to unfair harm under section 14(2)(e). In the circumstances of this appeal, I give this factor moderate weight in favour of a finding that the disclosure of the withheld portions of the records would constitute an unjustified invasion of personal privacy.

[56] After reviewing all of the submissions made in this appeal, I find that there are no other factors favouring disclosure or privacy protection that apply in the circumstances.

[57] The appellant has already received all of her own personal information in the record and large amounts of that pertaining to the deceased and the circumstances of her death. I find that the presumption at section 14(3)(b) and the factors at sections 14(2)(e) and (f) apply to the withheld portions of the records. I also find that there are no other factors under section 14(2) favouring the disclosure of this information to the appellant. Accordingly, I find that the withheld portions of the record qualify for exemption as their disclosure is presumed to constitute an unjustified invasion of personal privacy under section 38(b).

Is disclosure desirable for compassionate reasons?

[58] The police take the position that although the appellant may have an interest in the record at issue, the privacy interests of the affected parties outweigh her interest.

[59] The appellant states that she and her daughter were very close and that she had been involved in her daughter's life. She continues that "there is very little I didn't know about her personal life and the life she led with her boyfriend..." She indicates that she "require[s] all the information I can get for compassionate reasons and to help with my grieving process." She concludes, "I do not believe that anyone's privacy is being invaded as I am privy to all information except what was said verbatim to the investigating officers."

---

<sup>16</sup> Order PO-3093.

[60] The partner notes that the appellant has already received large amounts of information and takes the position that any further disclosure would constitute a significant invasion of his privacy and that it would have a negative impact on him.

[61] As I indicated above, in considering all of the circumstances in this appeal, I will take into account whether there are "compassionate reasons" for not disclosing the personal information of the affected parties to the appellant. This approach to the section 14(4)(c) analysis was clearly enunciated by Assistant Commissioner Beamish in Order PO-3129, where he found that "the *Act* does not restrict the analysis of section 21(4)(d) to the consideration of compassion to the requester alone. Section 21(4)(d) requires that the disclosure be desirable for compassionate reasons in relation to all the circumstances relating to the request."

[62] Similar to the findings in Order PO-3129, after considering all the circumstances surrounding the request and appeal, I find that the privacy interests of the affected parties "should not automatically yield to the compassionate reasons that may call for full disclosure to the appellant."

[63] As the grieving mother of the deceased, the appellant is entitled to disclosure of some portions of the records for compassionate reasons. As I noted above, she has already received significant amounts of information about the circumstances of her daughter's death. In my view, the police balanced all of the competing interests, including the "compassionate reasons for and against disclosure." I am satisfied that the police considered all of the circumstances of the request and withheld only those portions that, if disclosed, could cause serious emotional distress to the affected parties. As such, I find that the police properly applied the exception to the personal privacy exemption in section 14(4)(c) and uphold their decision.

**C. Did the police exercise their discretion under section 38(b)? If so, should this office uphold the exercise of discretion?**

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

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

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

[66] The submissions provided by the police on their exercise of discretion under section 38(b) are interspersed in their submissions on the other issues identified above, including the sensitivity of the information, the fact that it was provided in the context of a law enforcement investigation and in light of the fact that the police did take compassionate reasons into account in the approach they took and the disclosures they made both at first instance and during the adjudication stage of the appeal.

[67] Taking all of this into account, I am satisfied that the police have properly exercised their discretion in the circumstances of this appeal and find that the record at issue is exempt under section 38(b).

**ORDER:**

I uphold the decision of the police.

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

\_\_\_\_\_ June 27, 2013