

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-2919

Appeal MA12-25

Toronto Police Services Board

July 25, 2013

Summary: The appellant requested records relating to the death of her sister. The police granted access to portions of the records and denied access to the remaining portions pursuant to section 38(a) (discretion to refuse requester's own information), in conjunction with section 8(1)(l) (law enforcement) and section 38(b) (personal privacy). The appellant appealed this decision on the basis that disclosure is desirable for compassionate reasons (section 14(4)(c)). In this decision, the adjudicator orders the police to disclose all portions of the records that pertain to the death of the appellant's sister. The adjudicator upholds the discretionary exemption at section 38(b) for certain information that identifies witnesses approached by the police. The adjudicator also finds that sections 38(a)/8(1)(l) apply to police codes.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2(1) definition of personal information, 8(1)(l), 14(1), 14(3)(b), 14(2)(f), 14(2)(i), 14(4)(c), 38(a) and 38(b).

OVERVIEW:

[1] The appellant's sister was killed by a Toronto Police officer in 2011. On behalf of her mother and herself, she submitted a request to the Toronto Police Services Board (the police) for all information regarding the death of her sister.

[2] The police issued a decision¹ denying access to the records as the incident was being investigated by the Professional Standards Unit. The police claimed that sections 8(1)(a), 8(1)(b), 14(1)(f), 14(3)(b) and 38(a) and (b) apply to the records.

[3] The appellant appealed this decision.

[4] During mediation, the police indicated that the Professional Standards Unit investigation had been completed, and issued a new decision, in which they provided partial access to the records.² The police withheld the remaining records pursuant to section 38(a) (discretion to refuse requester's own information), in conjunction with section 8(1)(l) (law enforcement), and sections 14(1)(f) and 38(b), with reference to section 14(3)(b) (personal privacy). They also advised that some information had been removed as it was not responsive to the request. According to the index provided by the police, this information is contained in portions of the Event Details Report and the police officers' notes. With respect to the officers' notes, the police explained that certain portions of them pertain to other matters that the police officers dealt with during their tour of duty.

[5] After receiving the second decision, the appellant raised the reasonableness of search for a number of missing records as an issue in this appeal.

[6] It appears that the non-responsive information was not raised as an issue and this issue was not addressed further in the appeal. However, it is apparent from my review of the Event Details Report that the severances made to this record were not made in accordance with the index provided by the police. Although some portions are not responsive to the request as worded, other portions are directly responsive, but have been withheld. I note that sections 14(1) and 38(b) have been claimed for some pages, but the index indicates that other portions have been withheld only on the basis that they are not responsive to the request. Because the information contained in these portions of the report clearly relates to the incident and the parties involved, I will assume that the police inadvertently neglected to include the section 14(1) and 38(b) exemption claims on the index of records. Accordingly, I will review the Event Details Report to identify which portions are responsive to the request and include them in the discussions below.

[7] During discussions with the mediator, the police confirmed that the records include a copy of the CD containing a 911 call, which they withheld in its entirety. The police also indicated that in-car videos had been located, and that they would likely be withheld as non-responsive, although a decision had yet to be issued regarding them. At the end of the mediation stage, a decision letter regarding this category of records had not yet been issued.

¹ Decision dated December 15, 2011.

² Decision dated April 30, 2012.

[8] Also during mediation, the police confirmed that they disclosed the occurrence reports to the appellant with the exception of portions of two pages, which were withheld pursuant to sections 14(1) and 38(b).

[9] At the end of mediation, it was not clear whether the police had included police officers' notes as responsive records. However, upon review of the second decision issued by the police and records subsequently sent to this office, it is apparent that the police officers' notes were located and partially disclosed in accordance with the second decision issued by the police.

[10] Further mediation was not possible and the file was forwarded to the adjudication stage of the appeal process. I sought representations from the police, initially. After receiving the Notice of Inquiry, the police issued a third decision³ regarding in-car videos, in which they raised the application of sections 14(2)(f) (highly sensitive) and 14(2)(i) (damage the reputation) in addition to the section 14(1) and 38(b) exemptions referred to above for certain portions of the records identified in that decision. The police subsequently submitted representations, which took into account the changes they made in accordance with their third decision. I then sought representations from the appellant and the representations submitted by the police were shared with her in accordance with section 7 of this office's *Code of Procedure* and *Practice Direction 7*.

[11] The appellant submitted representations in response. Her representations raised the compassionate grounds provision in section 14(4)(c) of the *Act*. In seeking representations in reply from the police, I noted that the police expressly stated that they did not consider this section of the *Act* in making their decision regarding access. Accordingly, I asked the police to address the possible application of section 14(4)(c) in the circumstances of this appeal.

[12] The police did not submit representations in response. Rather, they issued a fourth decision⁴ in which they disclosed a complete copy of the 911 recording on the basis of compassionate reasons.

RECORDS:

[13] The records at issue include: occurrence reports, withheld in part; copies of in-car video CDs, withheld in accordance with the August 3 decision of the police; and 126 pages of an Event Details Report and police officers' notes, withheld in full or in part.

³ Decision dated August 3, 2012.

⁴ Decision dated January 11, 2013.

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(a) in conjunction with the section 8(1)(l) exemption apply to the information at issue?
- C: Does the discretionary exemption at section 38(b) apply to the information at issue?

DISCUSSION:

Preliminary Matter:

Reasonable search

[14] In the Notice of Inquiry that I sent to the appellant, I noted that the police made reference to access decisions they issued during the processing of the appeal, in which additional records were located and disclosed. I indicated that the appellant should take this into account in addressing the issues relating to the search that was conducted by the police. In her representations, the appellant does not address the search issue. By her silence on this issue, I will assume that she is now satisfied with the search conducted by the police for responsive records. Accordingly, I will not address the issue of search further in this order.

A: Does the record contain “personal information” as defined in section 2(1) and, if so, to whom does it relate?

[15] 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), “personal information” 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 disclosure of the name would reveal other personal information about the individual.⁵

[16] 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.⁶

⁵ Paragraph (h) of the definition of personal information at section 2(1).

⁶ Order 11.

[17] Sections 2(2), (2.1) and (2.2) 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.

(2.1) 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.

(2.2) 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.

[18] 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.⁷

[19] 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.⁸

[20] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.⁹

[21] The police submit that the records contain the personal information of a number of identified or identifiable individuals, in particular:

...the names and addresses, etc. of certain individuals who were spoken to by the attending officers. In addition, there is certain personal information of a sensitive nature; along with personal information of the deceased that we consider being unrelated to the sudden death that was also withheld.

[22] The police state further, and I agree, that none of the information at issue relates to an individual in their professional capacity.

⁷ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

⁸ Orders P-1409, R-980015, PO-2225 and MO-2344.

⁹ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

[23] The appellant does not specifically address this issue.

[24] Having reviewed the records, I find as follows:

- The occurrence reports contain the personal information of the deceased, the appellant's mother and another identified individual. The personal information includes the names, addresses and other personal identifiers such as age and gender. The occurrence reports also document the incident and include statements made by the individuals the police spoke to and background information about the deceased. The only portions of these records at issue contain the personal information of the deceased and of one other identified individual.
- The in-car video CDs mostly capture the progress of each involved police car as the officers drove to the scene. Certain portions also capture the set-up of the police at or near the scene. In some portions of the CDs there are oral references to the event as transmitted through the car radios. Certain portions of the videos record the activities of officers at the scene and vaguely capture the deceased. The CDs contain the personal information of the deceased and her mother.
- The Event Details Report records details of the incident from the time the 911 call came in until the end of the police's involvement. Only the first page contains the name and address of the deceased. The remaining portions of this record do not refer to any party by name, but identify them by context. The Event Details Report contains the personal information of the deceased, her mother and one other identifiable individual.
- The police officers' notes detail each officer's actions and observations at or around the scene of the incident, and as such, contain the personal information of the deceased and her mother. These notes also contain information about other identified individuals that the police officers spoke to during or after the incident, including their names, addresses, telephone numbers, dates of birth, what they were doing at the time of the incident, and in some cases information they provided to the police regarding their observations at the time of the incident. The information qualifies as the personal information of the individuals identified in the records.

[25] Because all of the records contain the mother's personal information, my analysis of the remaining issues will be conducted under sections 38(a) and (b).

B: Does the discretionary exemption at section 38(a) in conjunction with the section 8(1)(l) exemption apply to the information at issue?

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

[27] Section 38(a) reads:

A head may refuse to disclose to the individual to whom the information relates personal information,

if section 6, 7, 8, 8.1, 8.2, 9, 10, 11, 12, 13 or 15 would apply to the disclosure of that personal information.

[28] Section 38(a) of the *Act* recognizes the special nature of requests for one's own personal information and the desire of the legislature to give institutions the power to grant requesters access to their personal information.¹⁰

[29] Where access is denied under section 38(a), the institution must demonstrate that, in exercising its discretion, it considered whether a record should be released to the requester because the record contains his or her personal information.

[30] In this case, the police rely on section 38(a) in conjunction with section 8(1)(l).

Law Enforcement

[31] Section 8(1)(l) states:

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

facilitate the commission of an unlawful act or hamper the control of crime.

[32] Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context.¹¹

[33] The police state that the portions of the records withheld under this section contain police 10-codes, and refer to Order PO-1665, in which I upheld the exemption

¹⁰ Order M-352.

¹¹ *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).

after reviewing previous orders of this office which have consistently upheld the exemption in section 8(1)(l) for this type of information. In exercising their discretion to withhold this information from the appellant, it is apparent that the police took into consideration that the police codes were withheld for law enforcement reasons. In particular, the police express the concern that disclosure of the 10-codes could reasonably be expected to interfere with law enforcement activities which could compromise its effectiveness and the safety of police officers and/or the public.

[34] The appellant does not address this issue in her representations.

[35] As I noted in Order PO-1665, this office has issued many orders regarding the release of police codes and has consistently found that section 8(1)(l) applies to this type of information.¹² The appellant has not provided sufficient evidence to persuade me that a different result is warranted in the circumstances of this appeal. I am satisfied that the police have taken appropriate factors into consideration in exercising their discretion to withhold these portions of the records. Accordingly, I find that the police codes contained in the records are exempt under sections 38(a) and 8(1)(l) of the *Act*.

C: Does the discretionary exemption at section 38(b) apply to the information at issue?

[36] As I noted above, section 38 provides a number of exemptions from the general right individuals have under section 36(1) of the *Act* to access their own personal information held by an institution.

[37] 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.

[38] 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.

[39] Sections 14(1) to (4) provide guidance in determining whether the unjustified invasion of personal privacy threshold is met.

[40] If the information fits within any of paragraphs (a) to (e) of section 14(1), disclosure is not an unjustified invasion of personal privacy and the information is not

¹² For example, see Orders M-93, M-757, MO-1715 and PO-1665.

exempt under section 38(b). After reviewing the submissions made by the parties and the records at issue, I find that section 14(1) does not apply in the circumstances of this appeal.

[41] 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 38(b). The appellant indicates that her request for information is based on section 14(4)(c) of the *Act*.

14(4)(c) – compassionate reasons

[42] 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.

[43] 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”);

[44] 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.”¹³ I have also taken this approach in the current appeal.

[45] 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?

¹³ See for example, Orders MO-2237, MO-2234, MO-2420, MO-2515 and PO-2850.

3. Is the disclosure of the personal information of the deceased individual desirable for compassionate reasons, in the circumstances of the request?¹⁴

[46] Personal information about a deceased individual can include information that also qualifies as the personal information 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 provide assistance in this regard, but the overall circumstances must be considered and weighed in any application of section 14(4)(c).¹⁵

[47] 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."¹⁶

Parts one and two

[48] I note that the police have disclosed significant portions of the records to the appellant during the mediation and adjudication processes. The disclosed portions provide details of the circumstances of the deceased's death. With respect to the remaining withheld information, the police state:

The records clearly contain the personal information of identifiable individuals as they pertain to the investigation. Not only is it reasonable to expect that other individuals may be identified if the information is disclosed to the appellant, its release would constitute an unjustified invasion of personal privacy.

Further, as stated above, we have also withheld certain information pertaining to the deceased as this information is considered to be unrelated to the actual death; and therefore, falling under the section 14(1)(f) exemption.

[49] As I noted above, the police indicate in their submissions that they did not consider the application of section 14(4)(c) in responding to this access request. After being specifically requested to consider this section, the police disclosed only the copy of the 911 tape, but did not appear to consider the other portions of the records that

¹⁴ Orders MO-2237 and MO-2245.

¹⁵ Order MO-2237.

¹⁶ Order MO-2245.

they withheld. The police do not address the first two parts of the section 14(4)(c) test in their representations.

[50] It is unclear to me how the police could determine that portions of the records at issue are "unrelated to the actual death." The records all pertain to the incident from the time the deceased made the 911 call until the end of police involvement. The records contain information provided by the deceased in her call, which clearly relates to her state of mind at the time of the incident. As well, the records contain the observations of others relating to the deceased and/or the incident. Accordingly, I find that all of the information contained in the records is related to the circumstances of the death of the deceased and that it all qualifies as her personal information. Accordingly, the first part of the test has been met.

[51] With respect to the second part of the test, the appellant identifies herself as the sister of the deceased and indicates that she has made this request on her mother's behalf as well as her own. I am satisfied that the appellant and her mother fit within the definition of "close relative" as that term is defined above.

Part three

[52] I found above that the records all contain the deceased's personal information. I also found that some of the records contain the personal information of identified or identifiable individuals.

[53] 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 and other identified individuals is desirable for compassionate reasons.

[54] The police take the position that the presumption at section 14(3)(b) (investigation into possible violation of law) applies to all of the information at issue. In addition, the police claim that the factors in sections 14(2)(f) (highly sensitive) and (i) (unfair damage to reputation) also apply to portions of the in-car camera footage. I will take the presumption and factors claimed by the police into account in determining whether disclosure is desirable in the circumstances.

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

[55] 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;

[56] 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.¹⁷ The presumption can also apply to records created as part of a law enforcement investigation where charges are subsequently withdrawn.¹⁸

[57] Section 14(3)(b) does not apply if the records were created after the completion of an investigation into a possible violation of law.¹⁹

[58] The appellant does not specifically address the application of this exemption.

[59] It is clear, from the records themselves, that the information in them was compiled and is identifiable as part of an investigation into a possible violation of law. The police responded to a 911 call made by the deceased in which she indicated that she was about to commit a criminal offence. The police responded to that call and the entire incident was either recorded by the in-car cameras or detailed in the reports and notes that were made during or shortly after the incident ended. The records indicate that the police interviewed a number of individuals during their investigation into the incident. I am satisfied that the presumption at section 14(3)(b) applies to all of the personal information in the records at issue.

14(2)(f): information is highly sensitive and 14(2)(i): unfair damage to reputation

[60] Sections 14(2)(f) and (i) of the *Act* state:

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,

- (f) the personal information is highly sensitive;
- (i) the disclosure may unfairly damage the reputation of any person referred to in the record;

[61] To be considered highly sensitive, there must be a reasonable expectation of significant personal distress if the information is disclosed.²⁰

¹⁷ Orders P-242 and MO-2235.

¹⁸ Orders MO-2213, PO-1849 and PO-2608.

¹⁹ Orders M-734, M-841, M-1086, PO-1819 and PO-2019.

[62] The applicability of section 14(2)(i) is not dependent on whether the damage or harm envisioned by the clauses is present or foreseeable, but whether this damage or harm would be "unfair" to the individual involved.²¹

[63] The police have provided confidential representations explaining why they have claimed the application of these two factors for information that directly relates to the circumstances of the deceased's death. In their non-confidential representations, the police state:

The release of this information to the appellant would be a release to the public as a whole. (This point has been successfully argued in previous representations submitted by this institution). As such, this institution is relying on 14(2) in this circumstance as we believe should this material be released it would surely and unjustly invade the privacy of the deceased and unfairly damage the reputation of the involved officer who was exonerated by the Special Investigations Unit for his actions in this incident.

[64] The appellant did not directly address this issue, although some of the comments she made in her representations are relevant in determining the sensitivity of the information as it pertains to the deceased. In her submissions, the appellant indicates that both she and her mother were aware of the deceased's mental health issues and that she had, in the recent past, assisted her sister in dealing with them.

Section 14(2)(f) – highly sensitive

[65] The police did not claim, nor did I find that the records contain the personal information of the police officers involved in the incident, including the officer who shot the deceased. While I have no doubt that the subject officer was deeply affected by the incident, the records clearly reflect that he was acting in the course of his duties at the time. Accordingly, although I accept that he may well be distressed should this information be made public, I give little weight to this factor vis-à-vis the officer in the circumstances.

[66] The information at issue captures the final moments of the deceased's life. I agree with the police that the information contained in the withheld portion of the record relating to the deceased is highly sensitive as its disclosure could reasonably be expected to cause significant personal distress to the family of the deceased and to the deceased, had she survived. However, it is the family of the deceased that wishes to obtain this information, and, given that the deceased's family is already aware of the

²⁰ Orders PO-2518, PO-2617, MO-2262 and MO-2344.

²¹ Order P-256.

deceased's circumstances prior to her death, I find that the factor in section 14(2)(f) carries no weight in the circumstances.

[67] The remaining personal information in the records relates to information provided by witnesses about the incident. I do not find that any of the information about them in the records could be considered highly sensitive as it reveals little of a personal nature about the witnesses themselves. Accordingly, I do not find this factor relevant with respect to these individuals.

Section 14(2)(i) – damage to reputation

[68] I am not persuaded that disclosure of the in-car camera recording could reasonably be expected to damage the reputation of the officer, who was acting in his official capacity at the time, and who was, as the police note in their submissions, exonerated by the Special Investigations Unit.

[69] Even if there were some negative feedback relating to his actions, which could be used to attack his reputation, I am not persuaded that any damage that might be caused to his reputation would be unfair. In accepting the responsibilities that go with the position, a police officer must recognize that his actions will always be under public scrutiny. Disclosure of the actions taken by the police is consistent with the public accountability purpose underlying the *Act*. Accordingly, I conclude that this factor is not relevant in the circumstances.

[70] Although the appellant is free to share the information she receives in response to her request, in my view a consideration of all of the circumstances of the appeal, including consideration of any factors and presumptions that favour privacy protection implicitly recognizes the impact of disclosure.

[71] Moreover, the comments made by Assistant Commissioner Beamish in previous orders that have addressed similar issues provide some insight into the inclusion of the compassionate reasons exception in the *Act* and the intent of the Legislature to assist grieving family members:

Since 1999, this office has been advocating for greater disclosure to close family members of information about the deaths of loved ones. The reasons for this are outlined in great detail in Order MO-2237, and I will not repeat them here, with one exception. I note the support for this office's position taken by two professional psychologists and their comment that:

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.

As noted by the Police in their representations, this office has taken a broad approach in the determination of whether or not disclosure of information at issue is "desirable for compassionate purposes." I will continue to apply that approach here.

Order MO-2245 dealt with a similar set of circumstances in that a parent was requesting access to photographs taken by police at the scene where the body of her deceased son was found. I stated:

...I give significant weight to the appellant's submission that disclosure of the records will help her with the grieving process. As noted by the appellant, she did not have the opportunity to view her son in the state in which he was found. The videotape and photographs will provide her with this opportunity and bring closure to any questions she may still have regarding this part of his death. The videotape and photographs also show articles found at the site that may assist her understanding of her son's death. If the appellant would like to see her son in his natural deceased state in order to help her with the grieving process, she should be allowed that opportunity. Losing a loved one is a sad and difficult process. Section 14(4)(c) of the *Act* was designed to allow families to have the records they feel they require in order to grieve in the way they choose.

The position of the Police that the release of the photographs would not reduce the suffering of the appellant, but rather would add more distress and sorrow to her suffering is, in my view, misguided. The appellant has clearly indicated a desire to view the photographs and the videotape in order to gain a better understanding of her son's untimely death. She will be aware that these images are graphic. This is clearly spelled out in the representations submitted by the Police and shared with the appellant. Having been informed that disclosure of the videotape and photographs may be upsetting and disturbing, in my view the appellant is in the best position to determine whether disclosure is in her interests. In general, institutions may

have an obligation to inform spouses and close family members of the nature of the information they have requested under section 14(4)(c); for example if it is particularly graphic or disturbing. However, having provided that advice, it does not then rest with an institution to make decisions on behalf of that grieving spouse or relative as to whether disclosure is in *their* best interests. A well-informed adult can make that decision on their own behalf.

With the enactment of this section, *the Legislature has recognized a special group of requesters, namely the spouses and close relative of deceased individuals. Institutions have been directed to very specific criteria when considering disclosure to this group as compared to "disclosure to the world."* In this case, the Police have not recognized the clear intent of the Legislature.²²

[72] I agree with these comments and incorporate the reasoning in these previous decisions into the current appeal. Accordingly, I find that the position taken by the police that disclosure under the *Act* is effectively disclosure to the world, is not a relevant unlisted factor in the circumstances of this appeal.

Is disclosure desirable for compassionate reasons?

[73] In her representations, the appellant notes that her mother was in the house when the deceased made the 911 call. The appellant indicates further that she had been very active in assisting the deceased in obtaining medical care, and is, therefore, very familiar with her diagnosis and treatment. The appellant stresses that the deceased was "in the midst of a crisis for help" and believes that the police mishandled the situation. The appellant refers to previous orders of this office which have applied section 14(4)(c) for similar types of information.

[74] Although the appellant's representations are brief, I also refer to her letter of appeal, wherein she states:

We require the information for our own personal use to allow us to come to terms with the tragedy that took our beloved daughter/sister away from us. We need the information so we can find some closure and solace in the wake of this tragedy...We do not want to suffer more pain and anguish than what we already have had to endure. Our daughter/sister informed the 911 operator that she was diagnosed with Bipolar illness yet the Police just yelled and screamed at her and then shot her in the chest.

²² My emphasis.

[75] The deceased died a violent death in her confrontation with the police. Although her mother and sister are aware of her mental state, they require information about the incident to come to terms with her death and the manner in which it occurred. The police have provided them with portions of the records that contain some information, but have withheld the details of the chain of events that ultimately resulted in her death. The police have withheld the observations of witnesses at the scene, which would provide a different perspective from the observations of the police as to what transpired. The police have also withheld visual recordings of the deceased's final moments. In my view, this is the very information that the appellant and her mother require in order to "come to terms with the tragedy that took our beloved daughter/sister away from us."

[76] Although the personal information in the records is subject to the presumption at section 14(3)(b), and minimally sensitive with respect to the police officer who shot the deceased, I find that any information contained in the records that pertains to the circumstances of her death should be disclosed to the appellant as its disclosure is desirable for compassionate reasons. I am satisfied that disclosure of this information will assist the appellant and her mother in understanding all of the circumstances surrounding the deceased's death.

[77] That being said, I note that in investigating the incident, the police sought out and interviewed possible witnesses, recording these contacts in their notes. Some witnesses provided comments; others had nothing to give to the police because they did not see the incident. There is also a small amount of information on page 159 of the occurrence report that pertains to the deceased, but does not relate in any way to the circumstances of her death. I am not persuaded that disclosure of the identities and other identifying information of the witnesses or information about the witnesses who did not observe the incident or information about the deceased which is unrelated to the circumstances of her death is desirable for compassionate reasons. This information is subject to the presumption at section 14(3)(b). Moreover, disclosure of this information would not assist the appellant and her mother in the grieving process and would result in an unjustified invasion of the personal privacy of the individuals identified. I note that once identifying information is removed, the identities of witnesses cannot be ascertained by the comments they made.

[78] Accordingly, I find that on compassionate grounds, the information set out in Order provision 1 below should be made available to the appellant because its disclosure would not result in an unjustified invasion of the personal privacy of the deceased or any other individual identified in the records.

[79] I have considered the police's exercise of discretion in withholding the portions of the records that fall within the presumption at section 14(3)(b). Their concerns are interspersed in their submissions. Given that any witnesses approached by the police would be identified as part of the law enforcement investigation, I am satisfied that the

police have properly exercised their discretion in the circumstances. Accordingly, I find that the remaining withheld portions are exempt under section 38(b) of the *Act*.

ORDER:

1. I order the police to disclose the following information to the appellant by **August 15, 2013**:

- the in-car videos in their entirety;
- all personal information in the Event Details Report with the exception of one reference on page 5;
- all references to the deceased and her mother and/or the incident in the police officers' notes, including observations of witnesses.

In order to clearly identify the portions of the Event Details Report and the police officers' notes that should be disclosed, I have provided the police with highlighted copies of these records. The portions that I have highlighted in yellow should be disclosed to the appellant.

2. I uphold the decision of the police to withhold the remaining personal information and information that is exempt under sections 38(a)/8(1)(l).
3. In order to verify compliance with this order, I reserve the right to require the police to provide me with a copy of the records disclosed pursuant to provision 1.

Original Signed by: _____
Laurel Cropley
Adjudicator

_____ July 25, 2013