

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER PO-3212

Appeal PA12-18

Ministry of the Attorney General

June 7, 2013

**Summary:** The appellant made a request to the ministry for access to the complete SIU investigation file regarding her daughter's death. Access was denied pursuant to the discretionary law enforcement exemption in section 14(2)(a) and the mandatory personal privacy exemption in section 21(1). As the records contained the appellant's personal information, the discretionary exemptions in sections 49(a) and (b) were added as issues in the appeal. The section 49(a) exemption, in conjunction with the law enforcement report exemption in section 14(2)(a), was found to apply to the SIU director's report only. The remaining records were found not to be "reports" for the purposes of section 14(2)(a). Disclosure of some of these records was found to be an unjustified invasion of personal privacy under sections 21(1) or 49(b) but the compassionate grounds exception in section 21(4)(d) is found to apply to some of the information. The ministry's decision is upheld in part and some information is ordered disclosed to the appellant.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, ss. 2(1)(definition of "personal information"), 14(2)(a), 21(1), 21(3)(b), 21(4)(d), 49(a), 49(b).

**Orders and Investigation Reports Considered:** P-1315, P-1418, PO-1959, MO-2237, MO-2245, MO-2387.

## **OVERVIEW:**

[1] The appellant submitted a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to the Ministry of the Attorney General (the ministry) for access to the complete Special Investigation Unit (SIU) file regarding her daughter's death. The appellant's daughter died as a result of a gunshot wound in an incident involving the Toronto Police (the police) at the appellant's home.

[2] The ministry issued a decision denying access to all of the responsive records, advising that the matter was currently under investigation by the Office of the Chief Coroner. The ministry claimed the exemptions at sections 14(1)(a) (law enforcement), 14(1)(b) (law enforcement investigation), 14(1)(f) (right to fair trial), 19(b)(solicitor-client privilege), 21(1) (personal privacy), 49(a) and 49(b) (personal privacy).

[3] During mediation, the ministry issued a revised decision in which it advised that it would now be relying on sections 14(2)(a) (law enforcement report) and 21(1). The ministry advised that it would no longer be relying on sections 49(a) and (b), 14(1)(a), 14(1)(b) and 19(b). However, as the records appeared to contain the appellant's personal information, sections 49(a) and (b) remained at issue in the appeal.

[4] During the inquiry into this appeal, the adjudicator determined that the possible application of the exception in section 21(4)(d) should be considered as the appellant had indicated that access to the records was desirable on compassionate grounds. Accordingly, the adjudicator sought representations from both the ministry and the appellant. Representations were received from both parties. The file was then transferred to me to complete the inquiry.

[5] In this order, I partially uphold the ministry's decision and order the disclosure of additional information to the appellant.

## **RECORDS:**

[6] The records at issue consist of 548 pages comprised of various police reports, the SIU report and witness statements. There are also 13 CD's which consists of in-car video footage, audio statements and digital images pertaining to the incident which resulted in the appellant's daughter's death.

[7] The ministry issued a revised decision on the basis that it had considered the application of section 21(4)(d) and disclosed some records to the appellant. I have included a description of this disclosure in the index to this order.

## **ISSUES:**

- A. Do the records contain "personal information" as defined in section 2(1), and, if so, to whom does it relate?
- B. Does the discretionary exemption at section 49(a) in conjunction with the section 14(2)(a) exemption apply to the information at issue?
- C. Does the mandatory exemption at section 21(1) or the discretionary exemption at section 49(b) apply to the information at issue?
- D. Was the ministry's exercise of discretion under section 49(a) and/or (b) proper?

## **DISCUSSION:**

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

[8] 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 section 2(1) as follows:

"personal information" means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except if they relate to another individual,

- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual, and
- (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

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

[10] Section 2(3) also relates to the definition of personal information and states:

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.

[11] 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>

[12] 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 be reasonable to expect that an individual may be identified if the information is disclosed.<sup>3</sup>

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<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, PO-2225 and MO-2344.

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

[14] The ministry submits that the records contain the personal information of individuals other than the appellant including: the deceased individual (whose death was the subject of the SIU investigation), various police officers involved in the incident and subsequent investigation including the subject officer, civilian witnesses interviewed during the course of the investigation, and other persons involved in the investigation.

[15] The ministry states that the information in the record is personal information as set out in the definition of that term in section 2(1) as follows:

- Age and sex (paragraph (a));
- Medical, psychiatric and psychological history (paragraph (b));
- Addresses, telephone numbers and fingerprints (paragraph (d));
- The personal opinions or views of witnesses other than the appellant and not related to the appellant (paragraphs (e) and (g));
- Correspondence sent to the institution by persons that is implicitly or explicitly of a private or confidential nature (paragraph (f)); and
- Names of individuals together with other personal information about them or in circumstances where the disclosure of the names would reveal other personal information about the individuals (paragraph (h)).

[16] The ministry submits that the individuals in the records would be identifiable if the information was disclosed because the information in the records is very detailed and the incident which was the subject matter of the records garnered significant media attention.

[17] Lastly, the ministry submits that the records contain the personal and not professional information of the police officers who were not the subject of the SIU investigation. The ministry notes that the records consist largely of information provided by the witnesses during the course of a law enforcement investigation of the incident. The ministry argues that the reasoning in Reconsideration Decision R-980015 applies to the issue of whether the information of the witness police officers is their personal information, and states:

The objective of that investigation was to ascertain whether there were reasonable grounds to believe that the officer that was the focus of the investigation had committed any criminal offences in connection with the matter investigated. As information collected and/or produced for purposes of a criminal investigation, the ministry submits that the information in question was inherently of a personal nature.

[18] The ministry argues that I should apply the reasoning in Reconsideration Decision R-980015 and distinguish the information at issue in the present appeal from the information at issue before Adjudicator Donald Hale when he stated:

In order for an organization, public or private, to give voice to its views on a subject of interest to it, individuals must be given responsibility for speaking on its behalf. I find that the views which these individuals express take place in the context of their employment responsibilities and are not, accordingly, their personal opinions within the definition of personal information contained in section 2(1)(e) of the *Act*. Nor is the information "about" the individual, for the reasons described above. In my view, the individuals expressing the position of an organization, in the context of a public or private organization, act simply as a conduit between the intended recipient of the communication and the organization which they represent. The voice is that of the organization, expressed through its spokesperson, rather than that of the individual delivering the message.

[19] The appellant argues that she was present when a telephone call was made by her daughter to the police, prior to her death. Further, she submits that she is aware of any of the personal medical information relating to the deceased.

[20] Based on my review of the records, I find that the records contain the personal information of the deceased individual (the appellant's daughter), the appellant and other identifiable individuals, including civilian witnesses. I further find the records contain the personal information of the police officer who was the subject of the SIU investigation.

[21] As set out above, the records at issue were compiled and formed part of the SIU investigation of the incident that resulted in the deceased individual's death. The records contain information and images clearly revealing the appellant's daughter's personal information within the meaning of section 2(1) of the *Act*, including information relating to her race, age, sex, marital status (paragraph (a)); information relating to the education, medical, psychiatric, psychological, criminal and employment history (paragraph (b)); address, telephone number ((paragraph (c)); the views or opinions of another individual about the deceased (paragraph (g)), and the deceased's name where it appears with other personal information relating to her (paragraph (h)). I find the majority of the records contain information about the appellant's daughter and is her personal information for the purposes of the *Act*.

[22] The information relating to the appellant is also her personal information within the meaning of section 2(1) of the *Act* and includes: information relating to her age, marital status, sex (paragraph (a)); information relating to her medical and psychological history (paragraph (b)); address, telephone number ((paragraph (c)); and

the appellant's name where it appears with other personal information relating to her ((paragraph (h))). Some of the records containing the appellant's personal information have been disclosed to her. Pages 148 – 149 consists of a Follow-up report containing notes regarding an interview with the appellant conducted by the SIU. The audio recording of this interview has already been disclosed to the appellant and as disclosure of the appellant's own personal information to her would not be an unjustified invasion of another's personal privacy, I will order these pages disclosed.

[23] Some of the appellant's personal information is intertwined with the personal information of other identifiable individuals and cannot be easily severed. I will consider the application of section 49(b) to this information. Many of the records do not contain any information relating to the appellant and I will consider the application of the section 21(1) exemption to this information.

[24] The records at issue also include the information about civilian witnesses, which qualifies as their personal information within the meaning of section 2(1) of the *Act* and includes: address, telephone number (paragraph (d)); personal opinions or views of the individual (paragraph (e), and the individual's name where it appears with other personal information relating to them (paragraph (h)).

[25] I further find that the records contain information of the officer who was the subject of the SIU investigation that qualified as his personal information for the purposes of the *Act*. The SIU investigation examined the officer's conduct during the incident. While information relating to an individual in his professional capacity is not normally his personal information, the information may be considered personal if it reveals something of a personal nature about the individual. Prior orders of this office have held that records relating to an investigation into a police officer's conduct while on duty may reveal something of a personal nature of the police officer and as such, qualifies as their "personal information" for the purposes of the *Act*.<sup>4</sup> I find that the records contain the subject officer's: age (paragraph (a)); education and employment history (paragraph (b)); identifying number (paragraph (c)); the personal views of the officer (paragraph (e)); the views and opinions of other individuals about the officer (paragraph (g)); and the officer's name where it appears with other personal information relating to the officer (paragraph (h)).

[26] The records also contain information relating to seven other police officers who were treated as witnesses in the SIU investigation. These officers' provided their notes, statements and participated in recorded interviews. The records also contain video-taped recordings from their patrol cars and recorded radio messages. The records also contain information about the SIU investigators who were involved in conducting the investigation. I find that all of this information (with the exception of one witness officer) is information whose disclosure would not reveal anything of a personal nature

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<sup>4</sup> Orders PO-2524, PO-2633 and PO-3003.

of the officers and, as such, is not their personal information. It is evident from the information in the records that the officers were acting in their professional capacity when they provided evidence in the investigation. Some of this information is intertwined with the personal information of the deceased and other identifiable individuals. I will consider whether this information can be disclosed for compassionate reasons when I consider the application of section 21(4)(d).

[27] The records also contain some information that is personal in nature about the witness police officers including their age [paragraph (a) of the definition of "personal information" in section 2(1)]; employment history [paragraph (b) of the definition of "personal information" in section 2(1)] and their names where disclosure of it would reveal other personal information about the individual [paragraph (h) of the definition of "personal information" in section 2(1)].

[28] The records also contain the personal information of one witness officer who was present at the incident and I find disclosure of some of the information relating to this individual would reveal something of a personal nature about him. Accordingly, I find that the records contain the officer's age [paragraph (a) of the definition of "personal information" in section 2(1)]; and name where it appears with other personal information relating to him [paragraph (h) of the section 2(1) definition of "personal information"].

[29] Some of the records do not contain any personal information and I will order the ministry to disclose those which are not exempt under section 14(2)(a) since no other discretionary exemptions were claimed for that information and no other mandatory exemptions apply. In particular, I find the following records do not contain any personal information:

- CD's 109 – 116
- Pages 254 – 268
- Pages 324 - 328

**B. Does the discretionary exemption at section 49(a) in conjunction with the section 14(2)(a) exemption apply to the information at issue?**

[30] Section 47(1) gives individuals a general right of access to their own personal information held by an institution. Section 49 provides a number of exemptions from this right. Section 49(a) reads:

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

where section 12, 13, 14, 14.1, 14.2, 15, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that personal information.



[31] Section 49(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.<sup>5</sup>

[32] Where access is denied under section 49(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. In this case, the ministry relies on section 49(a) in conjunction with section 14(2)(a).

[33] Section 14(2)(a) is one of the law enforcement exemptions which states:

A head may refuse to disclose a record,

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

[34] The term "law enforcement" is used in several parts of section 14, and is defined in section 2(1) as follows:

"law enforcement" means,

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

[35] Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context.<sup>6</sup>

[36] It is not sufficient for an institution to take the position that the harms under section 14 are self-evident from the record or that a continuing law enforcement matter constitutes a *per se* fulfilment of the requirements of the exemption.<sup>7</sup>

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<sup>5</sup> Order M-352.

<sup>6</sup> *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).

<sup>7</sup> Order PO-2040; *Ontario (Attorney General) v. Fineberg*.

[37] In order for a record to qualify for exemption under section 14(2)(a) of the *Act*, the institution must satisfy each part of the following three-part test:

1. the record must be a report;
2. the report must have been prepared in the course of law enforcement, inspections or investigations; and
3. the report must have been prepared by an agency which has the function of enforcing and regulating compliance with a law.

[Orders 200 and P-324]

[38] The word "report" means "a formal statement or account of the results of the collation and consideration of information". Generally, results would not include mere observations or recordings of fact.<sup>8</sup>

[39] The title of a document is not determinative of whether it is a report, although it may be relevant to the issue.<sup>9</sup>

[40] Section 14(2)(a) exempts "a report prepared in the course of law enforcement *by an agency which has the function of enforcing and regulating compliance with a law*" (emphasis added), rather than simply exempting a "law enforcement report." This wording is not seen elsewhere in the *Act* and supports a strict reading of the exemption.<sup>10</sup>

[41] An overly broad interpretation of the word "report" could create an absurdity. If "report" means "a statement made by a person" or "something that gives information", all information prepared by a law enforcement agency would be exempt, rendering sections 14(1) and 14(2)(b) through (d) superfluous.<sup>11</sup>

[42] The ministry submits that the records at issue form part of the SIU investigative brief that the Director reviews in order to write his or her report to the Attorney General as mandated by section 113(8) of the *Police Services Act* (the *PSA*). Accordingly, the ministry submits:

...the SIU Director's Report to the Attorney General and the records that comprise the investigative brief constitute a 'formal statement or account of the results of the collation and consideration of information' in that they provide an overview of the incident and a description of the events prior

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<sup>8</sup> Orders P-200, MO-1238, MO-1337-I.

<sup>9</sup> Orders MO-1238, MO-1337-I.

<sup>10</sup> Order PO-2751.

<sup>11</sup> Order MO-1238.

to, during and subsequent to the incident that was investigated. As described above, the records that comprise the investigative brief, in this and other SIU investigations, form an integral part of the Director's Report in that they are considered by the Director in arriving at an ultimate disposition of the case, which disposition is then formally articulated in the Director's Report.

[43] The ministry goes on to argue that the records at issue meet the three-part test for the application of section 14(2)(a) on the following basis:

- The records at issue are reports for the purposes of section 14(2)(a) as they are more than "mere observations or recordings of fact" and are formal statements of the results of the investigation as well as accounts of the results of the collation and consideration of information.
- The records at issue were created by the SIU which is the agency authorized by the PSA to investigate "...the circumstances of serious injuries and deaths that may have resulted from criminal offences committed by police officers."
- The records at issue, which the ministry terms the "investigative brief", were prepared by the SIU during its investigation into the incident which is the subject of the appellant's request.

[44] The ministry submits that I ought to consider Orders P-1418 and P-1315, which support its position on the applicability of section 14(2)(a) to the records at issue. The ministry acknowledges that Orders PO-1959, PO-2414 and PO-2524 also may apply to the issue.

[45] In Order PO-1959, Adjudicator Sherry Liang reviewed a number of previous decisions that address the application of section 14(2)(a) to the records collected during the course of an SIU investigation and made the following findings with respect to the contents of an SIU file, including investigative material and the Director's Report:

Essentially, the Ministry's submission is that all of the records must be considered together for the purposes of the application of section 14(2)(a). I am unable to accept this submission, and I find that section 14(2)(a) requires consideration of whether each record at issue falls within that exemption. The Ministry has enclosed copies of two prior orders of this office in support of its position. In Order P-1315, it appears that a group of records described as the SIU's final investigative report, and which included witness statements, expert reports, summaries of forensic testing and other evidence gathered in the course of the police investigation into an accident, was considered as one record and found as

a whole to constitute a "report" for the purposes of section 14(2)(a). A similar approach was applied in Order P-1418. More recently, however, in PO-1819, section 14(2)(a) was applied to each record which formed part of the SIU investigation file.

On my reading of these orders, it is clear that even in P-1315, there were a large number of records in the SIU investigation file which were considered separately by the adjudicator for the purposes of section 14(2)(a). Some of these records, such as interview notes, a motor vehicle accident report and vehicle examination and damage report, are similar to those before me which the Ministry asserts form part of an overall SIU "investigation brief".

Order P-1418 is less easily reconciled with Order PO-1819, and with the approach I have taken in this order. I am satisfied that, if there is any inconsistency between the approaches in some of the orders in this area, the analysis in PO-1819 is more in keeping with the intent of this section of the Act. Although I find that Record 2 (the Report of the Director) meets the requirements of section 14(2)(a), it does not follow that all the material which may have been gathered together, placed before and considered by the Director before arriving at his conclusions is also exempt, without further analysis. In this respect, I agree with the appellant that section 14(2)(a) does not provide a "blanket exemption" covering all records which the Ministry views as constituting part of the SIU's "investigative brief."

In the case before me, the SIU investigation file consists of numerous different records from diverse sources. As the representations of the Ministry describe, they are essentially a compilation of information obtained during the course of the SIU's investigation and the steps taken by SIU staff in the discharge of that investigative jurisdiction, and include documentary materials obtained by the SIU or generated by the SIU. The Director's decision is based upon a review of all the records, but his analysis and decision is contained in Record 2 (the Director's Report) alone.

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I find that none of the remaining records at issue meet the definition of a "report". To elaborate further on some of these, Records 15, 19, 23 to 27 and 29 to 37 consist of either Sarnia Police Service incident reports, supplementary reports, or excerpts from police officers' notebooks. Generally, occurrence reports and similar records of other police agencies have been found not to meet the definition of "report" under the Act, in

that they are more in the nature of recordings of fact than formal, evaluative accounts of investigations: see, for instance, Orders PO-1796, P-1618, M-1341, M-1141 and M-1120. In Order M-1109, Assistant Commissioner Tom Mitchinson made the following comments about police occurrence reports:

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

On my review of the incident reports, supplementary reports and police officers' notes at issue in this appeal, I am satisfied that they also do not meet the definition of a "report" under the Act, in that they consist of observations and recordings of fact rather than formal, evaluative accounts. The content of these records is descriptive and not evaluative in nature.

[46] Adjudicator Liang's reasoning and approach has been followed in numerous orders of this office, including Order PO-2524 in which Adjudicator Steven Faughnan addressed the same argument by the ministry.<sup>12</sup> I agree with the reasoning expressed by Adjudicator Liang in Order PO-1959 and subsequent orders and I adopt it for the purposes of this appeal.

[47] Based on my review of records, I find that the Director's Report at pages 10 – 25 is the report from the Director to the Attorney General and consists of the required "formal statement of results of the collation and consideration of information" set out in the definition of the term "report" referred to above. Accordingly, I find that section 14(2)(a) applies to this record and it is exempt under section 49(a), subject to my finding on the ministry's exercise of discretion.

[48] Applying the reasoning set out in Order PO-1959 and related orders, I find that the remaining records are not reports for the purposes of section 14(2)(a) as they only consist of recordings of facts and observations. This information is contained in the various notes, emails, witnesses' statements, SIU and Toronto Police records, forms and other documents compiled by the Toronto Police and the SIU during the investigation. Lastly, I find that the CD's containing images and recordings also do not qualify as reports under section 14(2)(a), as they do not include any consideration or analysis of the information contained therein. I will proceed to consider the application of the

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<sup>12</sup> See also Orders PO-2414, PO-2633, PO-3003 and PO-3169

discretionary personal privacy exemption in section 49(b) and the mandatory section 21(1) exemption to these records.

**C. Does the mandatory exemption at section 21(1) or the discretionary exemption at section 49(b) apply to the information at issue?**

[49] Where a record contains personal information only of an individual other than the appellant, section 21(1) of the *Act* prohibits the ministry from releasing this information unless one of the exceptions in paragraphs (a) through (f) of section 21(1) applies. In this case, the only exception to the section 21(1) mandatory exemption which as potential application is section 21(1)(f) which reads:

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

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

[50] Because section 21(1)(f) is an exception to the mandatory exemption which prohibits disclosure of personal information, in order for me to find that section 21(1)(f) applies, I must find that disclosure of the personal information would not constitute an unjustified invasion of another individual's personal privacy.

[51] Where, however, the record contains the personal information of the appellant along with the personal information of other identifiable individuals, section 49(b) of the *Act* applies. This section reads:

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

where the disclosure would constitute an unjustified invasion of another individual's personal privacy

[52] Where a record contains the 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.

[53] If the information falls within the scope of section 49(b), the institution may exercise its discretion to disclose the information to the appellant. 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.

[54] Under both sections 21(1)(f) and 49(b) the factors and presumptions in sections 21(2) to (4) provide guidance in determining whether the “unjustified invasion of personal privacy” threshold is met.

[55] Section 21(2) provides some criteria for the ministry to consider in making its determination; section 21(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy; and section 21(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

[56] The ministry submits that the presumption in section 21(3)(b) applies as the personal information in the records was compiled and is clearly identifiable as part of an investigation into a possible violation of law, namely the *Criminal Code of Canada*. Section 21(3)(b) states:

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

was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

[57] The ministry submits that the SIU is a law enforcement agency that conducts criminal investigations into the circumstances surrounding specified incidents which fall within its jurisdiction. The SIU determines whether there are reasonable grounds to believe a criminal offence has been committed by the involved officers and to lay criminal charges in cases where such evidence is found to exist.

[58] Based on my review of the personal information at issue, I find that it was compiled and is identifiable as part of the SIU’s investigation into a possible violation of law, namely the *Criminal Code of Canada*. Furthermore, I find that despite the fact that no charges were laid in this matter, the presumption in section 21(3)(b) still applies.<sup>13</sup> Accordingly, I find that disclosure of the personal information is presumed to be an unjustified invasion of personal privacy pursuant to section 21(3)(b), subject to the possible application of the exception in section 21(4)(d) discussed below.

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<sup>13</sup> Order PO-1849

**Section 21(4)(d) – compassionate reasons**

[59] Section 21(4)(d) 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 a spouse or close relative of the deceased individual, and the head is satisfied that, in the circumstances, the disclosure is desirable for compassionate reasons.

[60] A presumed unjustified invasion of personal privacy in section 21(3) can be overcome if the personal information is found to fall under section 21(4) of the *Act* or if a finding is made under section 23 of the *Act* that a compelling public interest exists in the disclosure of the records that clearly outweighs the purpose of the section 21 exemption.<sup>14</sup>

[61] A finding that the exception in section 21(4)(d) applies to some or all of the personal information means that disclosure of that information would not be an unjustified invasion of personal privacy. Accordingly, where this provision applies, the information is not exempt under sections 49(b) or 21(1).<sup>15</sup>

[62] The application of section 21(4)(d) requires a consideration of the following questions, all of which must be answered in the affirmative in order for the section to apply:

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

[Orders MO-2237 and MO-2245]

[63] 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

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<sup>14</sup> *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767.

<sup>15</sup> MO-2237 and MO-2245



also the personal information of another individual or individuals. 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 21(4)(d).<sup>16</sup>

[64] The ministry submits that section 21(4)(d) does not apply in the circumstances in this appeal and states:

...the records contain the personal information of individuals other than the deceased. To reiterate, these individuals include various police officers involved in the incident and subsequent investigation (including the subject officer) and several civilian witnesses who were interviewed during the course of the investigation. Section 21(4)(d) only permits the disclosure of personal information about a deceased individual where it is desirable for compassionate reasons. None of these individuals stand in the necessary relationship with the appellant to justify disclosure under section 21(4)(d).

[65] The ministry acknowledges that the records contain the personal information of the deceased, but argues the following:

...this information is so amalgamated and interwoven with the personal information of individuals other than the deceased that severance is not reasonably feasible.

[66] In Order MO-2237, Assistant Commissioner Brian Beamish considered whether the personal information of the deceased could include the personal information of other individuals in his analysis of the application of section 14(4)(c) [municipal equivalent of section 21(4)(d)] and found:

The first question to address here is whether the reference to “personal information about a deceased individual” can include information that also qualifies as that of another individual. In my view, this question should be answered in the affirmative. The circumstances of an individual’s death, particularly one that is followed by a police or coroner’s investigation, are likely to involve discussions with other individuals that will entail, to a greater or lesser extent, the collection and recording of those individuals’ personal information. In my view, an interpretation of this section that excludes any information of a deceased individual on the basis that it also qualifies as the personal information of another individual would be inconsistent with the definition of “personal information”, set out above, since the information would clearly qualify as recorded information

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<sup>16</sup> Order MO-2237.

“about” the deceased individual. It would also frustrate the obvious legislative intent behind section 14(4)(c), of assisting relatives in coming to terms with the death of a loved one.

...

Accordingly, in my view, it is consistent with both the definition of “personal information” in section 2(1) and the legislative purpose behind this section to interpret “personal information about a deceased individual” as including not only personal information solely relating to the deceased, but also information that qualifies as the personal information of not only the deceased, but another individual or individuals as well.

The conclusion that personal information about a deceased individual can include information about other individuals, raises the further question of how the information of those other individuals should be assessed in deciding what to disclose under section 14(4)(c). In my view, assistance is provided in that regard by the legislative text, which permits disclosure that is “in the circumstances, desirable for compassionate reasons.”

Where this is the case, the “circumstances” to be considered would, in my view, 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) may provide assistance in this regard, but the overall circumstances must be considered and weighed in any application of section 14(4)(c).

As well, the fact that the protection of personal privacy is one of the *Act’s* purposes, articulated in section 1(b), must be considered in assessing whether to disclose information that, in addition to being personal information of the deceased, also qualifies as the personal information of another individual or individuals.

[67] I adopt the approach taken by Assistant Commissioner Beamish in Order MO-2237 and subsequent orders.<sup>17</sup> Accordingly, I will consider whether the personal information of the deceased including the personal information of other individuals can be disclosed to the appellant in accordance with section 21(4)(d).

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<sup>17</sup> Orders MO-2270, MO-2290, MO-2292, MO-2306, MO-2387 and PO-3169.

*Step 1 – Personal information of the deceased*

[68] Almost all of the records remaining at issue contain the personal information of the deceased describing the events proceeding and following her death.<sup>18</sup> They consist of records relating to the deceased, records relating to the circumstances surrounding her death and the subsequent SIU investigation. I find the personal information of the deceased is comingled with the professional information of the witness officers, the personal information of the subject officer and the personal information of the civilian witnesses. Some portions of the records contain the personal information of the deceased only. Accordingly, this requirement for the application of section 21(4)(d) is established, at least with respect to the majority of the records.

*Step 2 – Spouse or "Close Relative"*

[69] "Close relative" is defined in section 2(1) of the *Act* as:

"close relative" means a parent, child, grandparent, grandchild, brother, sister, uncle, aunt, nephew or niece, whether related by blood or adoption;

[70] I am satisfied that the appellant is the parent of the deceased individual whose personal information is contained in the records at issue, and therefore is a "close relative" for the purposes of section 21(4)(d).

*Step 3 – Desirable for Compassionate Reasons*

[71] The appellant submits that disclosure is desirable for compassionate reasons. She submits that the Toronto Police (the police) mishandled the situation with her daughter and she seeks to understand the events leading up to her daughter's death. She states that she was present during the 911 call where her daughter contacted the police. She also submits that she is aware of her daughter's medical and psychological history.

[72] The ministry submits that the appellant has not established that she is seeking access to the information at issue for compassionate reasons. The ministry submits that it took a number of steps to provide information to the appellant, outside of the freedom of information and access scheme including:

- SIU investigator liaising with appellant and the deceased siblings to update them on the progress of the investigation.

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<sup>18</sup> As stated above, I have found that some records relate to the subject police officer only or contain no personal information.

- Following the completion of the investigation, the SIU investigators met with the appellant and deceased siblings to provide a detailed debriefing of the findings of the investigation and the Director's decision.
- Another meeting occurred between the SIU investigator and the family to address the family's questions and concerns regarding the SIU investigation.
- The SIU also issued a news release at the end of the investigation summarizing its investigation and findings.

[73] The ministry states:

...there has been no showing to suggest that the SIU has inaccurately or fraudulently understood the nature of the evidence gathered during its investigation, or that the Unit has conveyed its substance and import to the appellant in anything other than an honest and reliable fashion. In sum, given the nature and extent of information that has already been provided to the appellant, including the records herein disclosed, it is the ministry's position that the appellant has not shown how or why the disclosure of the deceased's personal information in the records at issue is desirable for compassionate reasons.

[74] I have reviewed the parties' representations. I wish to emphasize to the ministry that the appellant's representations do not allege in any way that SIU provided false or misleading information to them. Nor do the appellant's representations indicate that she takes issue with the outcome or conduct of the SIU's investigation. Instead, the appellant appears to be concerned about the events that led up to her daughter's death.

[75] Assistant Commissioner Beamish also considered the meaning of the words "desirable for compassionate reasons" and stated the following in Order MO-2237:

The Concise Oxford Dictionary, Eighth Edition, defines "compassionate" as follows: "adj. sympathetic, pitying." Compassion is defined in the Concise Oxford Dictionary, Eighth Edition, as follows: "n. pity inclining one to help or be merciful."

I accept these definitions as evidence of the plain and ordinary meaning of the word "compassionate" and adopt it for the purposes of this appeal.

As discussed above, I have concluded that 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 recognition that, for surviving family members, greater knowledge of the circumstances of their loved one's death is by its very nature compassionate.

[76] I agree with the Assistant Commissioner's reasoning and adopt it for the purposes of this appeal.

[77] The appellant indicates that she wants access to the records setting out the events surrounding her daughter's death and in particular the events that transpired from the time of her daughter's 911 call to the time she died. The ministry has asked that I consider the privacy rights of the police officers (witness and subject officers), and civilian witnesses. In particular, the ministry submits that I consider the factors in section 21(2):

- The information contained in the records was supplied in confidence and is highly sensitive (autopsy photographs).
- Access to the appellant is not necessary for the purpose of subjecting the activities of the Government of Ontario or its agencies to public scrutiny.
- Nor is disclosure necessary to promote public health or safety as the SIU is subject to formal scrutiny by other institutions such as the Ontario Ombudsman.

[78] The relevant circumstances in this case include the appellant's need to receive the information to better understand the circumstances around her daughter's death, the privacy interests of the affected persons and the privacy interests of the deceased. I give considerable weight to the fact that much of the deceased's personal information in these records consists of the police officer's observations and statements about the deceased prior to her death, and is, therefore, her personal information under paragraph (g) of the definition of section 2(1).

[79] I also give some weight to the ministry's concerns about the privacy interests of the affected persons (subject officer and civilian witnesses). That being said, the personal information relating solely to them, including their names, contact information and other information does not include the personal information of the deceased and is properly exempt under section 49(b) or 21(1). Furthermore, I have found that the information of the witness officers is their professional and not personal information for the purposes of section 2(1).

[80] Finally, I wish to address the ministry's argument that the records contain highly sensitive information within the context of section 21(2)(f). A similar position has been taken by other institutions who claim that disclosure of this sensitive information would

not be desirable for compassionate circumstances and in fact would cause further distress. In Order MO-2245, Assistant Commissioner Beamish made the following comments on this issue:

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.

[81] Accordingly, in the circumstances of this appeal, and adopting a broad and all-encompassing approach, I am satisfied that disclosure of some of the information at issue is desirable for compassionate reasons within the meaning of section 21(4)(d).

[82] I have considered the positions put forward by both parties and I acknowledge that the information of the affected persons is intertwined with the personal information of the deceased. I further concede that there are sensitive images of the deceased taken at the scene of her death and the subsequent autopsy. However, I give significant weight to the appellant's submission that she requires the information to fully understand her daughter's death. I find that all the requirements for the application of the exception in section 21(4)(d) have been met and, as a result, I find that disclosure of the following information would not constitute an unjustified invasion of personal privacy and the mandatory section 21(1) exemption and the discretionary section 49(b) exemption do not apply.

### *Finding*

[83] I review my specific findings here. For the portions of the records that I have found should be withheld, I have indicated my finding on a highlighted copy of the records which will be sent to the ministry with its copy of this order.

## CD's

[84] The CD's consist of communication recordings and image recordings. I find the only recordings that contain the personal information of the deceased are the following:

- Communication CD containing the 911 Call (Record 107)
- In car video of Subject Officer, footage containing the deceased (Record 108)
- In car video of witness officers (Records 109 – 116)
- SIU Digital Images (Record 117)

[85] Record 107 contains the 911 call from the deceased. The appellant particularly mentions having access to this call in her representations. I find that disclosure of this record would provide the appellant with a greater understanding of the events leading up to her daughter's death.

[86] Record 108 contains the video recording from the subject officer's in car camera. The relevant portion of the recording is the part which contains the interaction between the subject officer and the appellant's daughter. I find that disclosure of this portion of the record would provide the appellant with a greater understanding of the events leading to her daughter's death. I uphold the ministry's decision to withhold the rest of the information under section 21(1).

[87] Record 117 contains various images taken by the SIU during its investigation of the incident and also images from the post-mortem. The images that I have ordered contain the images of the deceased. I uphold the ministry's decision to withhold the remaining information which relates to the subject officer and the SIU's investigation.

**[88] The appellant is warned that the photographs from Record 117 are extremely graphic in nature and include images of the autopsy performed on her daughter, as well as images of her daughter taken in the ambulance.**

[89] The audio recording of the statements of all of the police officers is contained on Record 119 including the witness and subject officers. I note that the substance of these statements is set out in the Follow Up reports which are also at issue in this appeal. The audio statements set out the officer's actions and observations of the occurrence, the appellant's daughter and the subject officer. Accordingly, the audio statements contain the personal information of the deceased and the subject officer. I have found that the statements of the witness officers regarding their actions and observations is not their personal information, but instead the professional information of the officers.

[90] In Order MO-2387, Assistant Commissioner Brian Beamish considered the application of the section 14(4)(c) exception (municipal equivalent to section 21(4)(d)) to digital recordings of the affected persons taken during interviews conducted by the police. The Assistant Commissioner set out the approach to be taken in such considerations:

Consistent with the approach in Order MO-2237, where the personal information of the deceased is intermingled with the personal information of the affected parties, before I will order the disclosure of any personal information of the affected parties, I must take into account all of the circumstances of the request, including the privacy interests of the deceased and the affected parties. I have carefully reviewed the witness statements and I find that there is little information in these records that has not already been disclosed to the appellants previously or that will be disclosed as a result of this order. As a result, the disclosure of the witness statements would shed little additional light on the circumstances surrounding the death of the appellant's son.

[91] After considering all the circumstances, the Assistant Commissioner went on to find that disclosure of the digital recordings of the interviews was not desirable for compassionate reasons and stated the following:

While I am sensitive to the appellant's claim that 'there is more to this than the Police have concluded', I am satisfied that if the severed portions of the Occurrence Report referred to above are disclosed then all material information relating to the circumstances of their son's death will have been disclosed to them.

[92] I adopt this approach for the purposes of this appeal. In the present appeal, the relevant circumstances consist of the following:

- The substance of the interviews is set out in the follow-up reports.
- The subject officer whose personal information is also set out in the interviews has not consented to the disclosure of his personal information.

[93] Having considered the relevant circumstances and the records at issue, I find that it is not desirable to disclose the audio recordings of the officers' interviews because the information which they contain is substantially similar to that in records that I will order disclosed below. I find that section 21(4)(d) does not apply and the section 49(b) and 21(1) exemptions apply to these recordings.



Pages 1 – 4, 5 and 6

[94] Pages 1 - 4 are all intake forms which have been withheld in full. I uphold the ministry's decision to withhold the information of the subject officer; however, the remaining information will provide the appellant with greater information of her daughter's death. Accordingly, I find that section 21(4)(d) applies to the information I have identified on the copy of the records provided to the ministry.

[95] Page 5 is the Case Closure form and Page 6 is the Circulation Form. The ministry disclosed a portion of Page 5 in a revised decision referred to above. I find that disclosure of the remaining information on Page 5 and all of the information on Page 6 will provide the appellant with greater information of her daughter's death and as such section 21(4)(d) applies. I uphold the ministry's decision to withhold the subject officer's name under section 21(1).

Pages 8 - 9

[96] Pages 8 and 9 comprise the letter from the SIU Director to the police chief which has been partially disclosed. I uphold the ministry's decision to withhold the information relating to the subject officer and find this information is not subject to the section 21(4)(d) exception and is properly exempt under section 21(1).

Pages 26 - 29

[97] These pages of the record are all fax cover sheets that have been withheld in full. I find that disclosure of the information on these pages will provide the appellant with greater information of the investigation of her daughter's death and as such section 21(4)(d) applies.

Pages 34 – 40 and 41 - 42

[98] These pages of the record comprise Follow-up reports 3 and 4 and relate to the SIU investigation. I find that disclosure of some of the information on these pages will provide the appellant with greater information of her daughter's death and as such, section 21(4)(d) applies. I uphold the ministry's decision to withhold a portion of the information relating to subject officer in both reports under section 21(1) but some of the information I find qualifies for the exception in section 21(4)(d).

Pages 43 – 45

[99] These pages comprise Follow-up report 5 and consists of the observations of a civilian witness. I find this information is properly exempt under section 49(b) and disclosure of this information does not qualify for the section 21(4)(d) exception as I

find that the appellant would not gain further information of the circumstances of her daughter's death through the disclosure of this information.

[100] I will consider the ministry's exercise of discretion in withholding this information below.

Pages 46 - 60

[101] These pages of the record consist of Follow-up reports 6 – 11 and are the recorded witness officers' interviews with the SIU investigators. I find that disclosure of some of the information on these pages would provide the appellant with further information about her daughter's death and the exception in section 21(4)(d) applies. However, I uphold the ministry's decision to withhold the personal information of the police officers (as set out in my discussion above) and some of the personal information of the subject officer. I find this information to be properly exempt under section 49(b) or 21(1).

Pages 61 - 67

[102] These pages consist of Follow-up reports 12 – 14 and are the SIU investigation notes regarding civilian witnesses. I find that disclosure of this information would not provide the appellant with further information about her daughter's death and I uphold the ministry's decision to withhold this information on the basis of section 49(b) and 21(1).

[103] I will consider the ministry's exercise of discretion to withhold the information under section 49(b) below.

Pages 71 -75

[104] Pages 71 – 75 comprise Follow-up report 16 which consists of the SIU's interview with the subject officer. Some of the information on these pages would provide the appellant with further information about her daughter's death and I find that section 21(4)(d) applies to this information. However, I uphold the ministry's decision to uphold the personal information relating to the subject officer only and find this information properly exempt under section 21(1).

Pages 76 - 87

[105] Pages 76 – 87 consist of Follow-up report 17 and 18 as well as a number of SIU investigation requests. I find that disclosure of some of this information would provide the appellant with further information about her daughter's death and qualifies for the exception in section 21(4)(d). I further uphold the ministry's decision to withhold the personal information of the witness officers under section 21(1).

Pages 88 - 103

[106] These pages of the record consists of procedural correspondence and requests for documentation, aid or information. I find that disclosure of some of the information would provide the appellant with further information about her daughter's death and qualifies for the exception in section 21(4)(d). I uphold the ministry's decision to withhold the personal information of other identifiable individuals under section 21(1).

Pages 104 – 147, 150 - 159

[107] These pages consist of emails between members of the SIU during the investigation of the incident. I find that disclosure of some of this information would provide the appellant with further information about her daughter's death and qualifies for exception under section 21(4)(d). I uphold the ministry's decision to withhold the personal information of other identifiable individuals under section 21(1).

Pages 160 - 208

[108] These pages consist of the I/CAD reports from the Toronto Police Service provided to the SIU. I find that disclosure of this information would provide the appellant with further information about her daughter's death and qualifies for exception under section 21(4)(d).

Pages 209 – 217 (Duplicate at 237 – 245)

[109] These pages consist of a Record of Arrest and other related documents from the Toronto Police Service regarding a prior incident involving the appellant's daughter. I find that some of this information would provide the appellant with further information about her daughter's death and qualifies for exception under section 21(4)(d). I uphold the ministry's decision to withhold the personal information of another identifiable individual under section 21(1).

Page 218

[110] This page consists of the Parade Sheet Report and contains the personal employment information of the police officers only. This record does not contain any personal information related to the deceased and I find that section 21(4)(d) does not apply and it is properly exempt under section 21(1).

Pages 219 - 222

[111] These pages consist of the occurrence report of the incident that resulted in the appellant daughter's death. I find that some of this information would provide the

appellant with further information about her daughter's death and qualifies for exception under section 21(4)(d). I uphold the ministry's decision to withhold some of the information under section 49(b).

Pages 223 - 225

[112] These pages consist of the Use of Force Training record and photograph of the subject officer. I uphold the ministry's decision to withhold this personal information under section 21(1) and this information does not qualify for the exception in section 21(4)(d). It does not contain any personal information of the deceased.

Pages 226 - 228

[113] These pages consist of various reports about the deceased. I find that disclosure of these pages of the record would provide the appellant with further information of her daughter's death and qualifies for exception under section 21(4)(d).

Pages 230 - 236

[114] These pages consist of an occurrence report for another incident involving the deceased. I find that some of the information would provide the appellant with further information about her daughter's death and qualifies for exception under section 21(4)(d). I uphold the ministry's decision to withhold some of the information under section 21(1), however.

Pages 246 - 247

[115] These pages consist of the computer printout relating to an occurrence involving the appellant's daughter (prior to her death) and another identifiable individual. I uphold the ministry's decision to withhold this record under section 21(1). The information in this record would not provide the appellant with information relating to her daughter's death and I find that the exception in section 21(4)(d) does not apply.

Pages 248

[116] These pages consist of a Toronto Police Services Injury/Illness Report. I find that disclosure of this record would provide the appellant with further information about her daughter's death and qualifies for the exception in section 21(4)(d).

Pages 250 - 253

[117] These pages consist of the crime scene log. I find that disclosure of the information on these pages would result in an unjustified invasion of the identifiable

individual's personal privacy and is properly exempt under section 21(1). These pages do not contain any personal information relating to the deceased.

Pages 269 - 323

[118] These pages consist of the police officer notes. I find that some of the information on these pages would provide the appellant with further information about her daughter's death and the exception in section 21(4)(d) applies. I uphold the ministry's decision to withhold the rest of the information under section 49(b).

Pages 329 – 330

[119] These pages consist of the Evidence List and disclosure of this information would provide the appellant with additional information relating to her daughter's death. Accordingly, it falls within the exception in section 21(4)(d).

Pages 333 - 360

[120] These pages are all SIU administrative documents. Some of the information contained would provide the appellant with additional information about her daughter's death and qualifies for the exception in section 21(4)(d). I uphold the ministry's decision to withhold the rest of the information under section 21(1).

Pages 363 - 374

[121] These pages of the records relate to the SIU's investigation of the deceased's medical claims to the Ontario Health Insurance Program (OHIP). I find that disclosure of some of this information would provide the appellant with additional information about her daughter's death and falls within the exception in section 21(4)(d). I uphold the ministry's decision to withhold the remaining personal information under section 21(1).

Pages 377 - 389

[122] These pages of the records contain SIU administrative documents. I find that disclosure of this information would provide additional information to the appellant about her daughter's death and qualifies for the exception in section 21(4)(d).

Pages 390 - 498

[123] These pages of the records consist of the copies from the SIU officers' notebooks. I find that some of the information in the notes would provide additional information to the appellant about her daughter's death and qualifies for the exception

in section 21(4)(d). I uphold the ministry's decision to withhold the remaining personal information under section 21(1) or 49(b).

### Conclusion

[124] Accordingly, as my findings above set out, I have found that some of the information in the records qualifies for the exception in section 21(4)(d) and thus disclosure of this information does not constitute an unjustified invasion of personal privacy under section 21(1) or 49(b).

[125] I have upheld the ministry's decision to withhold some of the personal information as disclosure of this information would be an unjustified invasion of an individual's personal privacy. For the information I have found exempt under section 49(b), I will now proceed to consider the ministry's exercise of discretion.

### **D. Was the ministry's exercise of discretion proper?**

[126] The exemptions at sections 49(a) and/or (b) are discretionary, and permit 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 failed to do so.

[127] 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.

[128] In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations.<sup>19</sup> This office may not, however, substitute its own discretion for that of the institution [section 54(2)].

[129] The ministry submits that it considered the following when it exercised its discretion to withhold information under sections 49(a) and (b):

- The privacy interests of the other identifiable individuals in the records.

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<sup>19</sup> Order MO-1573.

- The practice of a law enforcement agency in protecting personal information compiled as part of an investigation into potential criminal conduct.
- The nature of the law enforcement report exemption and the interests sought to be protected by that exemption.
- The need to ensure confidentiality of statements given by the witnesses, both civilian and officer, in order to ensure that SIU investigations benefit from best possible evidence.
- The historical practice of the SIU in dealing with the records.

[130] Having reviewed the records and the information withheld by the ministry, I find the ministry's exercise of discretion to be proper in the circumstances. The ministry properly considered the affected persons' privacy interests, the historical practice of the SIU and the privacy rights of other individuals to be protected by the exemptions. I find the ministry took into consideration only relevant factors and I uphold its exercise of discretion.

**ORDER:**

1. I order the ministry to disclose the information in the records, as set out in the attached index of records and as described in my finding above by **July 8, 2013**. To ensure clarity with respect to the information to be withheld, I have enclosed a copy of the records that are to be disclosed to the appellant highlighting the portions that are to be withheld.
2. I uphold the ministry's decision to withhold the remaining information.
3. In order to verify compliance with this order, I reserve the right to require the ministry to provide me with a copy of the records that are disclosed to the appellant pursuant to order provision 1.

Original signed by: \_\_\_\_\_  
Stephanie Haly  
Adjudicator

\_\_\_\_\_ June 7, 2013

## Appendix

Record Name	Page numbers	Exemption Claimed	Finding
Communications (CD)	Record 107	49(a), 14(2)(a), 49(b)	Disclose all
In Car Video (CD)	Record 108	49(a), 14(2)(a), 49(b)	Disclose in part
In Car Video (CD)	Record 109	49(a), 14(2)(a), 49(b)	Disclose all
In Car Video (CD)	Record 110	49(a), 14(2)(a), 49(b)	Disclose all
In Car Video (CD)	Record 111	49(a), 14(2)(a), 49(b)	Disclose all
In Car Video (CD)	Record 112	49(a), 14(2)(a), 49(b)	Disclose all
In Car Video (CD)	Record 113	49(a), 14(2)(a), 49(b)	Disclose all
In Car Video (CD)	Record 114	49(a), 14(2)(a), 49(b)	Disclose all
In Car Video (CD)	Record 115	49(a), 14(2)(a), 49(b)	Disclose all
In Car Video (CD)	Record 116	49(a), 14(2)(a), 49(b)	Disclose all
SIU Digital Images (CD)	Record 117	49(a), 14(2)(a), 49(b) <sup>20</sup>	Disclose in part
SIU Audio Statement	Record 118	Already disclosed	
SIU Audio Statements	Record 119	49(a), 14(2)(a), 49(b)	Withhold
Intake Form	1	49(a), 14(2)(a), 49(b)	Disclose in part
Intake Form	2	49(a), 14(2)(a), 49(b)	Disclose in part
Intake Form	3	49(a), 14(2)(a), 49(b)	Disclose in part
Intake Form	4	49(a), 14(2)(a), 49(b)	Disclose in part
Case Closure/Notification Form	5	49(a), 14(2)(a), 49(b) <sup>21</sup>	Disclose
Circulation of Director's Reports	6	49(a), 14(2)(a), 49(b)	Disclose
Letter from Director to AG	7	Fully disclosed	
Letter from Director to Police Chief	8 – 9	49(a), 14(2)(a), 49(b) <sup>22</sup>	Withhold
Director's Report	10 – 25	49(a), 14(2)(a), 49(b)	Withhold
Fax Cover Sheet	26 – 27	49(a), 14(2)(a), 49(b)	Disclose all
Fax Call Report	28 - 29	49(a), 14(2)(a), 49(b)	Disclose all
Follow Up Report 1	30 – 31	Fully Disclosed	
Follow Up Report 2	32 – 33	Fully Disclosed	
Follow Up Report 3	34 – 40	49(a), 14(2)(a), 49(b) <sup>23</sup>	Disclose in part
Follow Up Report 4	41 – 42	49(a), 14(2)(a), 49(b)	Disclose in part
Follow Up Report 5	43 – 45	49(a), 14(2)(a), 49(b)	Disclose in part
Follow Up Report 6	46 – 48	49(a), 14(2)(a), 49(b)	Disclose in part

<sup>20</sup> Some images partially disclosed with ministry's revised decision.

<sup>21</sup> Partially disclosed with ministry's revised decision.

<sup>22</sup> Partially disclosed with ministry's revised decision.

<sup>23</sup> Partially disclosed with ministry's revised decision.



<b>Record Name</b>	<b>Page numbers</b>	<b>Exemption Claimed</b>	<b>Finding</b>
Follow Up Report 7	49 – 50	49(a), 14(2)(a), 49(b)	Disclose in part
Follow Up Report 8	51 – 53	49(a), 14(2)(a), 49(b)	Disclose in part
Follow Up Report 9	54 – 55	49(a), 14(2)(a), 49(b)	Disclose in part
Follow Up Report 10	56 – 57	49(a), 14(2)(a), 49(b)	Disclose in part
Follow Up Report 11	58 – 60	49(a), 14(2)(a), 49(b)	Disclose in part
Follow Up Report 12	61 – 63	49(a), 14(2)(a), 49(b) <sup>24</sup>	Withhold
Follow Up Report 13	64 – 65	49(a), 14(2)(a), 49(b)	Withhold
Follow Up Report 14	66 – 67	49(a), 14(2)(a), 49(b)	Withhold
Follow Up Report 15	68 – 70	Fully disclosed	Disclose in part
Follow Up Report 16	71 – 75	49(a), 14(2)(a), 49(b)	Disclose in part
Follow Up Report 17	76 – 77	49(a), 14(2)(a), 49(b)	Disclose in part
Follow Up Report 18	78	49(a), 14(2)(a), 49(b)	Disclose in part
Interview Requests	79 – 87	49(a), 14(2)(a), 49(b)	Disclose in part
Letter from Investigative Supervisor to Police Chief	88 – 89	49(a), 14(2)(a), 49(b)	Disclose in part
Fax verification Report	90	49(a), 14(2)(a), 49(b)	Disclose all
Letter form SIU Director to Police Chief	91	49(a), 14(2)(a), 49(b)	Disclose all
SIU Letter	92	49(a), 14(2)(a), 49(b)	Disclose all
SIU Letter	93	49(a), 14(2)(a), 49(b)	Disclose all
Police Correspondence	94	49(a), 14(2)(a), 49(b)	Disclose all
Police Fax Cover Sheet	95	49(a), 14(2)(a), 49(b)	Disclose all
Police Correspondence	96	49(a), 14(2)(a), 49(b)	Disclose all
Police Fax Cover Sheet	97	49(a), 14(2)(a), 49(b)	Disclose all
SIU Correspondence	98 – 99	49(a), 14(2)(a), 49(b)	Disclose in part
Chief Coroner Correspondence	100	49(a), 14(2)(a), 49(b)	Disclose all
SIU Correspondence	101	49(a), 14(2)(a), 49(b)	Disclose all
SIU Request to Police	102 – 103	49(a), 14(2)(a), 49(b)	Disclose in part
Emails	104 – 147	49(a), 14(2)(a), 49(b)	Disclose in part
Follow Up Report	148 – 149	49(a), 14(2)(a), 49(b)	Disclose all
Emails	150 – 159	49(a), 14(2)(a), 49(b)	Disclose in part
Police I/CAD Report	160 – 208	49(a), 14(2)(a), 49(b)	Disclose in part
Record of Arrest	209	49(a), 14(2)(a), 49(b)	Disclose in part
Supplementary Record of Arrest	210 – 217	49(a), 14(2)(a), 49(b)	Disclose in part
Parade Sheet Report	218	49(a), 14(2)(a), 49(b)	Withhold
Occurrence Report	219 – 222	49(a), 14(2)(a), 49(b)	Disclose in part

<sup>24</sup> Partially disclosed with ministry's revised decision.

<b>Record Name</b>	<b>Page numbers</b>	<b>Exemption Claimed</b>	<b>Finding</b>
Use of Force Training Record	223 – 224	49(a), 14(2)(a), 49(b)	Withhold
Photograph	225	49(a), 14(2)(a), 49(b)	Withhold
RICI Booking	226 – 227	49(a), 14(2)(a), 49(b)	Disclose all
CPIC/MTO Query Report	228 – 229	49(a), 14(2)(a), 49(b)	Disclose all
Occurrence Report	231 – 236	49(a), 14(2)(a), 49(b)	Disclose in part
Record of Arrest	237	49(a), 14(2)(a), 49(b)	Disclose in part
Supplementary Record of Arrest	238 – 245	49(a), 14(2)(a), 49(b)	Disclose in part
COPS Occurrence	246 – 247	49(a), 14(2)(a), 49(b)	Withhold
Police Injury and Illness Report	248	49(a), 14(2)(a), 49(b)	Disclose all
Call Sign Sheet	249 <sup>25</sup>	49(a), 14(2)(a), 49(b)	N/R
Major Crime Scene Log	250 – 253	49(a), 14(2)(a), 49(b)	Withhold
Use of Force Procedural Manual	254 – 268	49(a), 14(2)(a), 49(b)	Disclose all
Police Officer Notes	269 – 323	49(a), 14(2)(a), 49(b)	Disclose in part
Working File Content	324	49(a), 14(2)(a), 49(b)	Disclose all
Firearm Report	325	49(a), 14(2)(a), 49(b)	Disclose all
Property Status Review	326 – 328	49(a), 14(2)(a), 49(b)	Disclose all
Evidence List	329 – 330	49(a), 14(2)(a), 49(b)	Disclose all
Car Specifications	331	Disclosed in full	
Drawing	332	Disclosed in full	
SIU Document List	333	49(a), 14(2)(a), 49(b)	Disclose in part
SIU Witness Lists	334 – 335	49(a), 14(2)(a), 49(b)	Disclose in part
SIU Transmittal and Receipt	336	49(a), 14(2)(a), 49(b)	Disclose in part
Email	337	49(a), 14(2)(a), 49(b)	Disclose in part
SIU Transmittal and Receipt	338 – 340	49(a), 14(2)(a), 49(b)	Disclose in part
Email	341	49(a), 14(2)(a), 49(b)	Disclose in part
SIU Transmittal and Receipt	342	49(a), 14(2)(a), 49(b)	Disclose in part
Email	343 – 345	49(a), 14(2)(a), 49(b)	Disclose in part
SIU Transmittal and Receipt	346 – 348	49(a), 14(2)(a), 49(b)	Disclose in part
Email	349	49(a), 14(2)(a), 49(b)	Disclose in part
SIU Transmittal and Receipt	350 – 359	49(a), 14(2)(a), 49(b)	Disclose in part

<sup>25</sup> I am unable to find that this record is responsive to the appellant's request. It does not contain any information of any of the officers involved.

<b>Record Name</b>	<b>Page numbers</b>	<b>Exemption Claimed</b>	<b>Finding</b>
Receipt			
Note	360	49(a), 14(2)(a), 49(b)	Disclose in part
Medical Releases	361 – 362	Fully Disclosed	
SIU Fax	363 – 364	49(a), 14(2)(a), 49(b)	Disclose in part
Ministry of Health Disclosure	365	49(a), 14(2)(a), 49(b)	Disclose in part
Clinic Report	366	49(a), 14(2)(a), 49(b)	Disclose in part
Provider Report	367	49(a), 14(2)(a), 49(b)	Disclose in part
Claim History	368 – 374	49(a), 14(2)(a), 49(b)	Disclose in part
SIU Fax	375 – 376	49(a), 14(2)(a), 49(b)	Disclose all
Personal Effects and Clothing Form	377	49(a), 14(2)(a), 49(b)	Disclose all
Case Submission Form	378 – 388	49(a), 14(2)(a), 49(b)	Disclose all
Inbound Evidence Receipt	389	49(a), 14(2)(a), 49(b)	Disclose all
Investigative Notes	390 – 498	49(a), 14(2)(a), 49(b)	Disclose in part
News Releases	499 – 501	Disclosed in full	
News Stories	502 – 548	Disclosed in full	