

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3069

Appeal MA13-269

Peel Regional Police Services Board

July 7, 2014

Summary: The requester sought access to details about the suicide of her son. The police decided to disclose some information but denied access to portions of an occurrence report and police officers' notes, photographs and an audio recording of a 911 call, relying on the personal privacy exemptions in sections 14(1) and 38(b). The requester appealed the decision, relying on compassionate reasons for disclosure. In this order, the adjudicator upholds the police's decision to withhold most of the remaining information, finding that, in the circumstances, additional disclosure is not desirable for compassionate reasons. She orders disclosure of some photographs.

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"), 14(1), 14(2)(f) and (i), 14(3)(b), 14(4)(c), 38(b).

Orders and Investigation Reports Considered: Order PO-3129.

OVERVIEW:

[1] This appeal arises out of the tragic suicide of an individual, in his home. Also present in the home were his wife and young children. The requester, who is the mother of the deceased, made a request to the Peel Regional Police Services Board (the police) for access to all records relating to the death of her son. The police located an Occurrence Details report, Officers' notes, photographs and an audio recording of a 911

call. The police decided to grant partial access to the Occurrence Details report, the officer's notes and the photographs, and denied access in full to the 911 recording. In denying access to portions of the records as well as some photographs and the 911 recording, the police relied on the personal privacy exemptions in sections 14(1) and 38(b) of the *Act*. The requester (now the appellant) appealed the police's access decision.

[2] During the mediation process certain issues were clarified. The appellant's representative advised that the appellant is not pursuing access to police codes and information relating to the length of service of the officers referred to in the records, or the personal information of any affected parties who were contacted by the police after the death had occurred. She also does not seek other personal information relating to the remaining affected parties such as their address, phone number or date of birth. The mediator notified the primary affected party and did not obtain consent to disclose any of this individual's information. The appellant's representative confirmed that she is seeking access to the records and portions of records remaining at issue and that she is relying on section 14(4)(c) of the *Act* (compassionate reasons) in this appeal. As mediation did not result in a resolution of the appeal, it was referred to adjudication.

[3] The police and the primary affected party submitted representations which were shared with the appellant, with the exception of confidential portions. The appellant provided representations in response.

[4] For the reasons below, I partially uphold the police's decision to exempt the remaining information at issue. I order disclosure of certain photographs.

RECORDS:

[5] The records at issue consist of

- the withheld portions of 7 pages of Occurrence Details
- the withheld portions of 32 pages of police officer's notes
- 17 photographs and
- a recording of a 911 call.

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 mandatory exemption at section 14(1) or the discretionary exemption at section 38(b) apply to the information at issue?

DISCUSSION:

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

[6] 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. 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.

[7] 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.

[8] 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. 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.

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

[10] The police submit that the records at issue contain the personal information of affected parties, including their statements given to the police about the events, which include their views and opinions. The records also include photo images of the property

of the affected parties, which is their personal information. The police also submit that while the records contain the personal information of the appellant, the purpose for which they were created relates to the affected parties.

[11] The primary affected party does not address this point specifically although her representations are based on the assumption that the records contain her personal information as well as that of others.

[12] The appellant states that she can only assume, based on the police's representations, that the records contain information relating to the appellant, the deceased and the primary affected party. She submits that if any of the records include opinions or views expressed by this individual about the deceased, these opinions or views should be considered the personal information of the deceased.

[13] I find that the Occurrence Details contain the personal information of the deceased, affected parties and the appellant. The personal information of the parties includes their age, sex, marital status, address, telephone number, their personal opinions or views, views or opinions about them, and their names together with other personal information about them. The police officers' notes also contain similar personal information, of the same individuals.

[14] I find that most of the photographs contain the personal information of the deceased and the affected parties. They show the interior of the home and convey information about its residents, such as their possessions and lifestyle. Although the photographs do not contain names, the residents are well known to the appellant.

[15] I find that the photographs at pages 37-40 contain the personal information of the deceased only and no other party. These photographs show the precise manner in which the deceased took his life by focusing on one area of the residence and do not show any other details of the home and its contents.

[16] One photograph, at page 25 of the records, shows the exterior of the home only, and does not reveal anything personal about the residents. I find that this photograph does not contain any personal information.

[17] None of the photographs contain the personal information of the appellant.

[18] The audio recording of the 911 call contains the personal information of the deceased and the affected parties, who are all clearly identified in the call. It does not contain the personal information of the appellant.

[19] As one photograph does not contain any personal information, it does not qualify for exemption under section 14(1) or 38(b) and I will order it disclosed. I will turn to consider whether the other photographs, as well as the rest of the records, are exempt.

B: Does the mandatory exemption at section 14(1) or the discretionary exemption at section 38(b) apply to the information at issue?

[20] I have found that some of the records contain the personal information of identifiable individuals but not the appellant, and that other records contain the personal information of both the appellant as well as other individuals.

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

[22] In contrast, under section 14(1), where a record contains personal information of another individual but *not* the requester, the institution is prohibited from disclosing that information unless one of the exceptions in sections 14(1)(a) to (e) applies, or unless disclosure would not be an unjustified invasion of personal privacy [section 14(1)(f)].

[23] In both section 38(b) and 14(1) situations, sections 14(1), (2), (3) and (4) of the *Act* provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the individual’s personal privacy. Section 14(2) provides some criteria for the police to consider in making this determination; section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy; and section 14(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy. In addition, if the information fits within any of paragraphs (a) to (e) of section 14(1), disclosure is not an unjustified invasion of personal privacy.

Representations

[24] The police submit that the presumption in section 14(3)(b) applies as the records were created in the course of an investigation into a sudden death. The police state that they considered the factors in section 14(2) favouring disclosure of personal information, and are of the view that none apply in these circumstances. The police submit that the factor in section 14(2)(h) (information provided in confidence) weighs against disclosure as the information was implicitly provided in confidence.

[25] With respect to the application of section 14(4)(c) (disclosure on compassionate grounds), the police submit that they must balance disclosure to meet the interests of the appellant with compassion for the primary affected party by maintaining her right to privacy. They state that the appellant has indicated that she wishes to know what the

primary affected party told the police about the events leading up to the suicide. The police state that the appellant believes the primary affected party is hiding the reason for the suicide. They submit that the primary affected party is also suffering from grief as a result of the event. The police contacted her to determine whether she consented to disclosure and she decided against giving consent to further disclosure.

[26] The police submit that both the appellant and the primary affected party deserve consideration on compassionate grounds and that further disclosure would be victimizing the affected party.

[27] The primary affected party strenuously objects to further disclosure. She believes that the purpose for the request is to obtain information for the purpose of "condemning" and not for compassionate grounds as any pertinent information has already been disclosed, including through the release of the autopsy report. She refers to the factors in sections 14(2)(i) (unfair damage to reputation), 14(2)(f) (highly sensitive) and 14(4)(c) (compassionate grounds) in support of her position that no further disclosure is appropriate.

[28] The appellant submits that the exception in section 14(4)(c) does not apply to the primary affected party, but is an exception for the benefit of the requester. As such, she submits, compassion for the appellant should be considered on its own. The appellant submits that the interests of the primary affected party are already protected under the *Act*, and the intent of section 14(4)(c) is to assist relatives in coming to terms with the death of a loved one.

[29] The appellant submits that 911 calls are not confidential and in fact are often made public. She is aware that the primary affected party made the 911 call and is requesting the content of the call to be disclosed simply for closure and peace of mind, and not to place blame or fault as has been suggested.

[30] The appellant submits that if disclosure of the deceased's personal information would result in the disclosure of the primary affected party's personal information because it is comingled, then section 14(4)(c) allows for the release of such information to her for compassionate reasons. She submits that the privacy interests of the primary affected party must yield to the compassionate reasons for disclosure.

[31] The appellant also submits that withholding the information would lead to an absurd result because she is in possession of the Coroner's Report which contains the information in the police notes that have not been disclosed. She would therefore not be obtaining any new information about the primary affected party as any personal information of the affected party in the records is already known to her.

Analysis

[32] I find that the presumption against disclosure in section 14(3)(b) applies, as the personal information in the records was compiled and is identifiable as part of an investigation into a possible violation of law. This presumption applies even where no charges are laid. I accept the police's representations that an investigation into a sudden death is a type of investigation covered by the presumption. Some of the information also falls within the presumption in section 14(3)(a), as it relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation of the deceased. The presumption in section 14(3)(d) (employment or educational history) applies to some of the personal information of the deceased or the primary affected party, as does the presumption in section 14(3)(f) (finances, income, etc.).

[33] With respect to the recording of the 911 call, and the appellant's arguments about the non-confidentiality of such a call, this office has found that there is a significant public (as well as private) interest in maintaining the confidentiality of such calls.¹

[34] The factor in section 14(2)(f), which weighs against disclosure, is highly relevant, as there is a reasonable expectation of significant personal distress if the personal information is disclosed. Although I appreciate the primary affected party's position with respect to the factor in section 14(2)(i) (unfair damage to reputation), I find this factor not relevant in the circumstances, which are more about a personal relationship than a public reputation.

[35] None of the listed factors in section 14(2) favour disclosure.

[36] As the section 14(3)(b) presumption applies, I find that disclosure of the personal information in the photographs and the recording of the 911 call would be an unjustified invasion of the personal privacy of the deceased, the affected party, and other parties. Subject to my discussion of section 14(4)(c) below, this information is exempt under section 14(1).

[37] With respect to the Occurrence Details and police officers' notes, I have found that these pages contain the personal information of the appellant as well as others, and their disclosure is therefore governed by the discretionary exemption in section 38(b). Although the appellant's personal information is in these records, it is minimal. The overwhelming bulk of their contents is about the deceased and the affected parties. Having regard to the application of the presumptions and factors discussed above, I also find that disclosure of the withheld personal information in these records would be

¹ Order MO-2923.

an unjustified invasion of personal privacy. Again, subject to my discussion of section 14(4)(c) below, it is exempt under section 38(b).

Section 14(4)(c) – compassionate reasons for disclosure

[38] The principle argument raised by the appellant is that she qualifies for disclosure for compassionate reasons under section 4(4)(c), which states:

... a disclosure does not constitute an unjustified invasion of personal privacy if it,

discloses the 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.

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

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

[40] The term "close relative" is defined in section 2(1) of the *Act* and includes parents. The appellant therefore qualifies for disclosure under this section.

[41] The appellant has submitted that section 14(4)(c) excludes consideration of compassion for the affected party. This has not been the approach taken by this office. Personal information about a deceased individual can include information that also qualifies as that of another individual. Where this is the case, the "circumstances" to be considered would include the fact that the personal information of the deceased is also the personal information of another individual or individuals. In Order PO-3129, Assistant Commissioner Brian Beamish discussed the application of the provincial equivalent to section 14(4)(c) in circumstances similar to those before me, stating:

² Orders MO-2237 and MO-2245.

Furthermore, I agree with the affected person that the *Act* does not restrict the analysis of section [14(4)(c)] to the consideration of compassion to the requester alone. Section [14(4)(c)] requires that the disclosure be desirable for compassionate reasons in relation to all the circumstances relating to the request. After considering all the circumstances surrounding the request and appeal, I find that the privacy interests of other individuals, including the affected person and her children, should not automatically yield to the compassionate reasons that may call for full disclosure to the appellant.

However, as the grieving father of the deceased, I do find that the appellant is entitled to disclosure of at least some portions of the records for compassionate reasons. I have carefully reviewed the records in light of the representations submitted by all parties and find that the ministry carefully balanced all of the competing interests, including the compassionate reasons for and against disclosure. The ministry thoroughly considered all the circumstances of the request and the appeal and withheld portions that, if disclosed, could cause serious emotional distress to the affected person and her children. As such, I find that the ministry properly applied the exception to the personal privacy exemption in section [14(4)(c)] and uphold its decision.

[42] I accept the appellant is entitled to information about the events surrounding her son's death, for compassionate reasons. She has already received a significant amount of information about those circumstances, including photographs of the deceased and the Coroner's Report. She has also obtained access to portions of the Occurrence Details and the police officers' notes. What remains at issue in this appeal is her right to disclosure of the remaining information. She states that she wishes to have more information that will assist her in understanding the events leading up to and surrounding the death of her son. The information that she most desires, however, – the contents of the 911 call and statements made to the police by the primary affected party – is the very information which is the most sensitive for the primary affected party. Some of this is the personal information of the deceased, in that it contains views expressed by the primary affected party about the deceased, but it also reveals or is inextricably intertwined with the affected parties' personal information, who themselves should be treated with compassion and respect for their privacy. In the circumstances, I do not find disclosure of this information to be desirable for compassionate reasons.

[43] Some of this information - certain photographs - is the personal information of the deceased only. Although they are sensitive, they do not contain the personal information of the affected parties and is not the information whose potential disclosure causes most concern to the primary affected party. In assessing the compassionate reasons for and against disclosure, and the absence of a privacy interest other than that

of the deceased, I conclude that disclosure of these photographs is desirable for compassionate reasons.

[44] While I appreciate the appellant's reasons for wishing access to the remaining information, and I accept that there are compassionate reasons that favour disclosure of this type of information to her, there are also very strong circumstances, based on the privacy interests of other parties and compassion for their emotional distress, that are relevant to the application of section 14(4)(c).

[45] The appellant has also referred to the absurd result principle, arguing that she is already aware of some of the information. This office has stated that where a requester originally supplied the information, or is otherwise aware of it, the information may not be exempt under sections 14(1) or 38(b), because to withhold the information would be absurd and inconsistent with the purpose of the exemption.³

[46] Although the appellant has access to some information about her son's death, she is explicitly seeking access to additional information, for the purpose of greater understanding. Further, given the privacy interests of the affected parties, there is nothing absurd in upholding the application of the exemption to this information. I find the absurd result principle does not apply in the circumstances of this appeal.

[47] In conclusion, I find that disclosure of the remaining information at issue would be an unjustified invasion of personal privacy and it is exempt under section 14(1) or 38(b). As the section 38(b) exemption is discretionary, it remains for me to consider whether the police properly exercised their discretion in denying access under this provision.

Exercise of Discretion

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

[49] 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.

³ Orders M-444 and MO-1323.

[50] In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations.⁴ This office may not, however, substitute its own discretion for that of the institution [section 43(2)].

[51] In this case, the police state that the appellant has received some information and the redactions were limited and specific to the circumstances of the request and the content of the record. They submit that in exercising their discretion against further disclosure, they took into account the nature of the record, the context in which the information appears, and the non-consent of the affected parties. They state that the information is inherently personal (to the affected parties).

[52] The appellant's submissions on the exercise of discretion focus on her compassionate reasons for disclosure. Above, I described the police's reasons for not applying section 14(4)(c) in favour of additional disclosure and, to the extent that these reasons are also applicable to the exercise of discretion under section 38(b), I find that they took into account relevant considerations and did not take into account irrelevant considerations.

ORDER:

1. I order the police to disclose the photographs at pages 25 and 37-40 to the appellant by **August 12, 2014** but not before **August 7, 2014**. 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 to the appellant.
2. I uphold the police's decision to exempt the remaining information from disclosure.

Original Signed by: _____
Sherry Liang
Senior Adjudicator

July 7, 2014

⁴ Order MO-1573.