

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3260

Appeal MA14-132

Sarnia Police Services Board

November 5, 2015

Summary: The appellant made a request to the Sarnia Police Services Board for records relating to an incident involving the appellant's son which resulted in his death. After extensive mediation, the records remaining at issue consisted of photographs and the withheld portion of a police officer's notes, which the police denied access to, claiming the application of the mandatory exemption in section 14(1) (personal privacy) of the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). In this order, the adjudicator finds that the records are exempt from disclosure under section 14(1). However, she also finds that the disclosure of the photographs is desirable for compassionate reasons, applying section 14(4)(c) of the *Act*. The police are ordered to disclose the photographs to the appellant. The police's decision with respect to the officer's notes is upheld.

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

Orders and Investigation Reports Considered: MO-3069.

OVERVIEW:

[1] This order disposes of the issues raised as a result of an appeal of an access decision made by the Sarnia Police Services Board (the police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The request was for records relating to a specific incident. The incident resulted in the death of the

requester's son.

[2] The police issued a decision letter to the requester, indicating that they had notified other individuals whose interests could be affected by disclosure (the affected parties), and granted partial access to responsive records. The police claimed that the disclosures were being made "under 'compassionate' circumstances."¹ The police denied access to other information, claiming the application of the exemptions in sections 8(2)(a), 14(2)(f), 14(3)(b), 38(a) and 38(b) of the *Act*. The police also stated that some information was withheld from the records because it was not related to the request.²

[3] The requester (now the appellant) appealed the police's decision to this office. At the outset of the mediation of the appeal, the appellant expanded the scope of the request. In response, the police issued supplementary decision letters granting further access to records.

[4] After extensive mediation, the appellant narrowed the scope of the appeal to one portion of a police officer's notes, photographs taken at the scene of the incident, and the list of evidence/property seized at the scene. The police had denied access to these records, claiming the application of the mandatory exemption in section 14(1) (personal privacy).

[5] The appeal was then transferred to the adjudication stage of the appeals process, where an adjudicator conducts an inquiry. The adjudicator assigned to the appeal sought and received representations from the police and the appellant, which were shared in accordance with this office's *Practice Direction 7*. During the inquiry, the police issued another supplementary decision letter to the appellant granting access to the evidence list in its entirety. Consequently, this record is no longer at issue. The file was then transferred to me for final disposition. For the reasons that follow, I uphold the police's decision in part. The police are ordered to disclose the photographs to the appellant.

RECORDS:

[6] The records at issue consist of a portion of one paragraph of a police officer's notes and 17 photographs.

ISSUES:

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

¹ This is apparently a reference to section 14(4)(c) of the *Act*.

² Information that is not related to a request is referred to as non-responsive or not responsive.

- B. Does the mandatory exemption at section 14(1) apply to the information at issue?

DISCUSSION:

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

[7] In order to determine which sections of the *Act* may apply, it is necessary to decide whether the records contain “personal information” and, if so, to whom it relates. Personal information 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 if 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;

[8] The police submit that the records contain the personal information of identifiable individuals including the appellant's son. In particular, the police argue that the photographs contain the personal information of the appellant's son and another individual, as most of the photographs show the interior of the home and convey information about them, such as their possessions and lifestyle.

[9] With respect to the withheld portion of the officer's notes, some of the police's representations on this issue are confidential. However, the police advise that none of the information at issue contains the appellant's personal information.

[10] The appellant's representations do not address this issue directly, other than acknowledging that the photographs contain personal information.

[11] I have reviewed the withheld information from the police officer's notes and the photographs. I find that most of the photographs contain information that could be characterized as the "personal information" of identifiable individuals. The photographs depict the exterior and interior of a house. In Order MO-3069, Assistant Commissioner Sherry Liang found that photographs of the interior of a home convey information about the residents of a home, such as their possessions and lifestyle. She also found that despite the fact that the photographs did not depict images of the individuals or their names, these individuals were well known to the appellant. The situation is the same in this case. Consequently, I find that photographs 3, 4, 5, 6, 8, 9, 11, 12, 13 and 14 contain the personal information of the appellant's son and another individual, as they depict the interior of the house and their possessions.

[12] I find that photographs 7, 10, 15, 16 and 17 contain the personal information of the appellant's son only. These photographs focus on one area of the home, depicting the manner in which the appellant's son died, and do not show any other details of the home or its contents.

[13] Further, photographs 1 and 2 depict the exterior of the home only, and do not reveal anything personal about its residents. Consequently, I find that these photographs do not contain personal information and do not qualify for exemption under section 14(1). Therefore, I order the police to disclose photographs 1 and 2 to the appellant.

[14] I also find that the withheld portion of the officer's notes contains the personal information of identifiable individuals, including two minors. In particular, the withheld information consists of their names and information about their family status, falling within paragraph (a) of the definition of personal information in section 2(1) of the *Act*.

[15] Lastly, I find that none of the information at issue contains the personal information of the appellant.

[16] I will now consider whether the remaining photographs and the withheld portion of the officer's notes are exempt under section 14(1).

Issue B: Does the mandatory exemption at section 14(1) apply to the information at issue?

[17] Where a requester seeks personal information of another individual, section 14(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 14(1) applies.

[18] The section 14(1)(a) to (e) exceptions are relatively straightforward. The section 14(1)(f) exception, allowing disclosure if it would not be an unjustified invasion of personal privacy, is more complex, and requires a consideration of additional parts of section 14. Under section 14(1)(f), if disclosure would not be an unjustified invasion of personal privacy, it is not exempt from disclosure.

[19] Sections 14(2) and (3) help in determining whether disclosure would or would not be an unjustified invasion of privacy. Also, section 14(4) lists situations that would not be an unjustified invasion of personal privacy.

[20] If any of paragraphs (a) to (h) of section 14(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 14. Once established, a presumed unjustified invasion of personal privacy under section 14(3) can only be overcome if section 14(4) or the "public interest override" at section 16 applies.³

Representations

[21] The police submit that the presumption in section 14(3)(b) applies because the records were created in the course of an investigation into an attempted suicide. In addition, the police argue that information at issue is highly sensitive and, therefore, the factor in section 14(2)(f) which weighs against disclosure also applies. The police go on to submit that none of the factors in section 14(2) that favour disclosure apply.

[22] With respect to the application of section 14(4)(c), which allows for the disclosure of personal information to a close relative of a deceased individual if the disclosure is desirable for compassionate reasons, the police submit that they must balance the appellant's interests with the privacy interests of the affected parties. The police go on to state that considerable information has already been provided to the appellant, and that the remaining records contain the personal information of "only the affected parties" who should also be treated with compassion and respect for their privacy, and who had not provided consent to the police to disclose their personal information.

[23] The appellant's position is that disclosure of the information at issue would not constitute an unjustified invasion of privacy. The appellant states:

³ *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div. Ct.).

Our son was residing at this home and we know all about their possessions and lifestyle. We have pictures ourselves that were taken at the residence from time to time. As his parents, we feel very adamant that this would not breach [sic] anyone's personal information nor should be considered highly sensitive to anyone. . .

[24] With respect to the possible application of section 14(4)(c), the appellant states that having the "total picture" of the police investigation, including the photographs and officer notes, would allow he and his spouse the opportunity to cope with their loss. In particular, the appellant submits that the photographs are very important and may contain information that is not contained in any of the records that have already been disclosed. This information, he states, may answer questions regarding the logistics of the incident that may allow he and his spouse the closure they need.

Analysis and findings

[25] I find that the presumption against disclosure in section 14(3)(b), as well as the factor in section 14(2)(f) applies to the photographs and the withheld portion of the officer's notes, as the personal information contained in these records was compiled and is identifiable as part of an investigation into a possible violation of law, and is highly sensitive. The presumption applies even where no charges are laid. I accept the police's position that an investigation into an attempted suicide is the type of investigation covered by the presumption. Because this presumption applies, and taking the factor in section 14(2)(f) into consideration, I find that the disclosure of the personal information in the photographs and the officer's notes would be an unjustified invasion of the deceased's personal privacy and other affected parties, including two minors. Subject to my findings regarding the possible application of section 14(4)(c), I find that this information is exempt under section 14(1).

[26] The appellant argues that he qualifies for disclosure for compassionate reasons under section 14(4)(c), which 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.

[27] Personal information about a deceased individual can include information that also qualifies as that of another individual. Where this is the case, the "circumstances" to be considered would include the fact that the personal information of the deceased is also the personal information of another individual or individuals. The factors and circumstances referred to in section 14(2) may provide assistance in this regard, but the

overall circumstances must be considered and weighed in any application of section 14(4)(c).⁴

[28] After the death of an individual, it is that person's spouse or close relatives who are best able to act in their "best interests" with regard to whether or not particular kinds of personal information would assist them in the grieving process. The task of the institution is to determine whether, "in the circumstances, disclosure is desirable for compassionate reasons".⁵

[29] The term "close relative" is defined in section 2(1) of the *Act* as follows:

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

[30] 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?⁶

[31] With respect to part 1 of the test, I have already found that the records contain the personal information of the deceased and other individuals. Regarding part 2 of the test, the appellant is the parent of the deceased and, therefore, qualifies as a "close relative" as defined in section 2(1) of the *Act*.

[32] Turning to part 3 of the test, I accept that the appellant is entitled to information about the events surrounding his son's death, for compassionate reasons. In particular, I am satisfied with the appellant's argument that the photographs may provide him with information that may assist him (and his spouse) in obtaining closure. In assessing the compassionate reasons for and against disclosure, I find that disclosure of the personal information in the photographs to the appellant is desirable for compassionate reasons.

[33] Conversely, I do not find that the disclosure of the withheld portion of the officer's notes, which contains the personal information of other individuals, including

⁴ Order MO-2237.

⁵ Order MO-2245.

⁶ Orders MO-2237 and MO-2245.

two minors, is desirable for compassionate reasons. In making this finding, I have taken into consideration the privacy interests of these individuals, and note that the withheld portion of the notes is very limited and specific. Consequently, I find that section 14(4)(c) does not apply to the withheld portion of this record.

ORDER:

1. I order the police to disclose the 17 photographs to the appellant in their entirety by **December 11, 2015** but not before **December 4, 2015**.
2. I uphold the police's decision to exempt the remaining information, which is the withheld portion of the officer's notes.
3. I reserve the right to require the police to provide me with copies of the photographs it discloses to the appellant as a result of this order.

Original Signed by: _____
Cathy Hamilton
Adjudicator

_____ November 5, 2015