

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3343

Appeal MA15-416

The Greater/Grand Sudbury Police Services Board

August 8, 2016

Summary: The appellant made a request to the Greater/Grand Sudbury Police Services Board (the police) for access to records relating to her father's death. The police denied access to this information, claiming the application of the mandatory exemption in section 14(1) (personal privacy), and the discretionary exemptions in section 38(b) (personal privacy) and 38(a) in conjunction with section 8(1)(c) (reveal investigative techniques and procedures). The appellant raised the possible application of the limitation in section 14(4)(c) (disclosure desirable for compassionate reasons). In this order, the adjudicator finds that the information at issue consists of the personal information of the deceased and another individual (the affected party), but not that of the appellant. The adjudicator finds that the part of the records containing the personal information of both the deceased and the affected party is exempt from disclosure under section 14(1). Conversely, the adjudicator finds that the portion of the records containing only the personal information of the deceased is not exempt from disclosure, as she was satisfied that its disclosure is desirable for compassionate reasons under section 14(4)(c). The police are ordered to disclose part of the records to the appellant.

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), 14(2)(h), 14(3)(b) and 14(4)(c).

OVERVIEW:

[1] This order disposes of the issues raised as a result of an appeal of an access decision made by the Greater/Grand Sudbury Police Services Board (the police) in response to a request made under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The requester's access request was for any records relating to

her father's suicide, including his suicide note.

[2] The police issued a decision letter to the requester, denying access to all of the responsive records they located. The police advised the requester that they were not satisfied that she was seeking the information for compassionate purposes. In the alternative, the police advised the requester that they were claiming the application of the mandatory exemption in section 14(1) (personal privacy), and the discretionary exemptions in section 38(a), 38(b) and 8(1)(c) (reveal investigative techniques and procedures).

[3] The requester (now the appellant) appealed the police's decision to this office. During the mediation of the appeal, the appellant narrowed the scope of her request to the contents of her father's suicide note and other records where the contents of the note is reproduced. The police advised the mediator that the suicide note had been destroyed when the investigation file was closed. However, the police then conducted a second search for records and located the suicide note. The police issued a revised decision letter to the appellant, denying access to the suicide note, claiming the application of the discretionary exemption in section 38(b) in conjunction with section 14(1).

[4] Also during mediation, the police granted partial access to other records, consisting of police officer's notes, occurrence reports and witness statements. Portions of these records were withheld under the discretionary exemption in section 38(b). The appellant subsequently asked the mediator to contact an affected party referred to in the records in order to seek consent to disclose the suicide note¹ and references made to it in the other records.

[5] The mediator subsequently contacted the affected party, who declined to provide consent to disclose the suicide note or any information contained in the other records relating to the suicide note. The appellant advised the mediator that she wished to continue to pursue access to the suicide note and/or references to its contents in the other records.

[6] The appeal then moved to the adjudication stage of the appeals process, where an adjudicator conducts an inquiry. I sought and received representations from the police, the appellant and the affected party. Representations were shared in accordance with this office's *Practice Direction 7*.

[7] For the reasons that follow, I uphold the police's decision, in part. I order the police to disclose a portion of the suicide note (and also where it is reproduced in other records) to the appellant on the basis of section 14(4)(c). I also find that the remainder of the note is exempt from disclosure under the mandatory exemption in section 14(1).

¹ The suicide note was addressed to the affected party.

RECORDS:

[8] The records consist of a hand-written suicide note and verbatim quotes of the note contained in police officer's notes and occurrence reports.

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 in 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?

[9] 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. That term is defined in section 2(1) in part as follows:

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

- (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;

[10] 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.² In addition, to qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.³

[11] The police state that the records contain the personal information of the deceased, as he was the author of the suicide note and that the note was addressed to his spouse (the affected party). The police rely on paragraph (h) of the definition of personal information set out in section 2(1) of the *Act*.

[12] The affected party states that the note is a personal communication between spouses and that no other person is referred to in the note, other than herself. The

² Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

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

appellant's representations do not address this issue.

[13] I find that the suicide note (and its reproduction in portions of other records) contains the personal information of two identifiable individuals, namely the deceased and the affected party. The note consists of two sentences and a signature. I find that the first sentence contains the personal information of both the deceased and the affected party and that this information is so intertwined that it is not severable. Conversely, I find that the second sentence and the signature contain the personal information of only the deceased. The personal information of both individuals, I find, falls within the definition of personal information in paragraph (h) of the definition in section 2(1) of the *Act*, as both individuals' names appear in the note, accompanied by other personal information about them.

[14] I also find that the records do not contain the appellant's personal information. Consequently, whether the information is exempt from disclosure is properly considered under the mandatory exemption in section 14(1), rather than the discretionary exemption in section 38(b) of the *Act*.

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

[15] 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. In the circumstances, it appears that the only exception that could apply is section 14(1)(f) which allows disclosure if it would not be an unjustified invasion of personal privacy.

[16] The factors and presumptions in sections 14(2) and 14(3) help in determining whether disclosure would or would not be an unjustified invasion of privacy under section 14(1)(f).

[17] 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.⁴ The appellant has raised the application of section 14(4)(c), which I will discuss below.

[18] In this appeal, the police claim that the presumption in section 14(3)(b) applies, which states:

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

⁴ *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div. Ct.).

(b) 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.

[19] Even if no criminal proceedings were commenced against any individuals, section 14(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of law.⁵

[20] The police submit that the presumption in section 14(3)(b) applies because the personal information in the suicide note was compiled and is identifiable as part of an investigation into a possible violation of law. The police go on to state that the investigation was classified as a sudden death investigation. The police also advise that they have an internal procedure regarding suicide notes. In particular, the procedure states that where suicide is being considered as a possible manner of death and a note from the deceased is located, the officer shall seize the note until the completion of the Coroner's investigation. The other parties' representations do not address the possible application of the presumption in section 14(3)(b).

[21] I am satisfied that the police conducted an investigation into the death of the deceased, and that the contents of the suicide note and the references to it in the officers' notes and occurrence reports were compiled and are identifiable as part of that investigation. Consequently, I find that the presumption in section 14(3)(b) applies to the information at issue.

[22] The police also rely on two of the factors in section 14(2) that weigh against the disclosure of personal information. In particular, the police submit that the factors in section 14(2)(f) and (h) apply because the personal information at issue is highly sensitive,⁶ and was supplied to the affected party by the deceased in confidence.⁷ In my view, the information at issue is highly sensitive and, therefore, the factor in section 14(2)(f) applies, and I give it significant weight. However, I cannot find that the information at issue was supplied in confidence by the deceased, given the lack of evidence before me on this issue, and that the deceased's views regarding the disclosure of the information cannot be ascertained on the face of the records. Therefore, I find that this factor has no application in these circumstances.

[23] As previously stated, 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.⁸ If any of the paragraphs in section 14(4) apply, disclosure is not an unjustified invasion of personal privacy and the information is not

⁵ Orders P-242 and MO-2235.

⁶ See section 14(2)(f).

⁷ See section 14(2)(h) which states that the personal information has been supplied by the individual to whom the information relates in confidence.

⁸ *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div. Ct.).

exempt under section 14(1).

[24] In this case, the appellant has raised the possible application of section 14(4)(c), which states:

Despite subsection (3), a disclosure does not constitute an unjustified invasion of personal privacy if it,

(c) discloses personal information about a deceased individual to the spouse or a close relative of the deceased individual, and the head is satisfied that, in the circumstances, the disclosure is desirable for compassionate reasons.

[25] 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.

[26] 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:

- Do the records contain the personal information of the deceased individual?
- Is the requester a spouse or close relative of the deceased individual?
- Is the disclosure of the personal information of the deceased individual desirable for compassionate reasons, in the circumstances of the request?⁹

[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. 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).¹⁰

[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*.¹¹

[29] The police advise that while they are of the view that the appellant's access to

⁹ Orders MO-2237 and MO-2245.

¹⁰ Order MO-2237.

¹¹ Order MO-2245.

the information at issue may assist her in the grieving process, the fact remains that the affected party did not consent to the disclosure of the personal note from the deceased to her.

[30] The affected party states that the information at issue was a personal communication between spouses and that its disclosure to the appellant would be an unjustified invasion of her personal privacy. She also submits that, in her opinion, disclosure of the information to the appellant will not bring closure for her, and may actually cause her more pain because the appellant is not mentioned in the note. The affected party also submits that she cannot ease the appellant's grief, and can only grieve in her own way and try to adjust to life without her long-term spouse. Further, the affected party argues that the appellant's efforts to obtain the suicide note are extremely hurtful to her and disrespectful to both she and the deceased.

[31] The appellant states that she and her father (the deceased) were very close and that he would want her to be able to access his final words, and that she knows that his last words were meant for her in order to allow closure. The appellant advises that she requires the note to determine if it is authentic and if it is in her father's own handwriting, and also to ascertain what his frame of mind was at the time of his death. Lastly, the appellant states that, in her opinion, the affected party's refusal to provide consent to disclose the information at issue constitutes bad behaviour.

Parts one and two

[32] As previously stated, I find that the records contain the personal information of the deceased and of the affected party. I also find that the appellant fits within the definition of close relative as that term is defined above. Accordingly, I find that the first two parts of the test have been met.

Part three

[33] The circumstances surrounding the death of the appellant's father are tragic. The appellant has described the deep personal loss she experienced as a result of her father's death, and that she has been unable to come to terms with his death because she is struggling to determine his state of mind at that time, as well as his last wishes.

[34] I have taken a number of factors into account in balancing the deceased's privacy interests with whether the disclosure of his personal information is desirable for compassionate reasons, including:

- The fact that the appellant has received significant information from the police concerning the circumstances of her father's death. It appears that the appellant is already aware, in a general sense, of what occurred;
- The closeness of the father/daughter relationship, which carries significant weight; and

- That I am satisfied that a portion of the information at issue sheds light on the deceased's last wishes, and I give significant weight to the appellant's statements that she requires this information as part of her grieving process. I accept the appellant's argument that she has not been provided with information concerning her father's last wishes.

[35] I have also taken into account the circumstances relating to the privacy interests of the affected party. I have already found that the presumption in section 14(3)(b) and the factor in section 14(2)(f), which weighs against disclosure, are relevant. I also give significant weight to the fact that the affected party has not provided consent to disclose her personal information to the appellant. As previously stated, I find that the first sentence of the suicide note contains the personal information of both the deceased and the affected party and that this information is intertwined to such an extent that it cannot be severed. In my view, the intrusion on the personal privacy of the affected party in order to provide the appellant with access to the deceased's personal information in the first sentence is not necessary nor justified. In other words, I find that it is not desirable in the circumstances to disclose the first sentence of the suicide note to the appellant for compassionate reasons, and, therefore, it does not meet part three of the test. I find that disclosure of this information would constitute an unjustified invasion of the deceased's and the affected party's personal privacy, and that it is exempt from disclosure under section 14(1).

[36] Concerning the remaining personal information of the deceased, which is the second sentence of the note and his signature, (which does not contain the personal information of the affected party), I find that in weighing the privacy interests of the deceased with the need for the appellant to understand and come to terms with his death, I find that disclosure of this specific personal information is desirable for compassionate reasons, thus meeting the third part of the test. Consequently, the disclosure of this personal information would not constitute an unjustified invasion of the deceased's personal privacy, and it is not exempt under section 14(1).

[37] In approaching the appeal in this way, I am satisfied that the information I have ordered the police to disclose to the appellant is sufficient for her to obtain information about her father's state of mind and last wishes at the time of his death, without encroaching on the affected party's privacy rights.

ORDER:

1. I order the police to disclose part of the suicide note and the verbatim reproductions of it in the other records to the appellant by September 13, 2016 but not before September 7, 2016. I have enclosed a copy of the suicide note to the police. The highlighted portion of the note should not be disclosed to the appellant.
2. I reserve the right to require the police to provide me with copies of the records it discloses to the appellant.

Original Signed by: _____
Cathy Hamilton
Adjudicator

_____ August 8, 2016