

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-3781

Appeal PA17-34

Ministry of Community Safety and Correctional Services

October 26, 2017

**Summary:** The appellant requested police records about a close relative's death under the compassionate reasons exception in section 21(4)(d) of the *Act*. After considering section 21(4)(d), the ministry withheld some of the responsive information, citing the personal privacy exemptions in the *Act*. The appellant appealed the ministry's decision, submitting that more of the withheld personal information should be disclosed under section 21(4)(d). This order upholds the ministry's application of section 21(4)(d) to the withheld information.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, section 21(4)(d).

**Orders and Investigation Reports Considered:** MO-2237, PO-3732.

### OVERVIEW:

[1] The appellant made a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to the Ministry of Community Safety and Correctional Services (the ministry) for copies of police records about the death of the appellant's relative.

[2] The appellant confirmed he was relying on section 21(4)(d) of the *Act*, which allows the ministry to disclose an individual's personal information to close relatives for compassionate reasons.

[3] After seeking the views of affected parties and considering section 21(4)(d), the

ministry decided to grant access to the records in part.

[4] The appellant appealed the ministry's decision. The appellant advised that he was not interested in obtaining information that was withheld on the basis it was not responsive to his request or information, including police codes, that was withheld pursuant to section 14(1)(l) of the *Act*.

[5] Mediation did not resolve the issues in the appeal, so it proceeded to the adjudication stage, where an inquiry is conducted. During the inquiry, the ministry, affected parties and the appellant provided representations on the issues set out in a Notice of Inquiry.

[6] This order upholds the ministry's decision to withhold in part the records responsive to the appellant's request.

## **RECORDS:**

[7] The records at issue are a two-page Occurrence Summary and a six-page Homicide/Sudden death report (report). Some information on each page of the Occurrence Summary and the report has been withheld by the ministry, citing sections 14(1)(l) (facilitate commission of unlawful act or hamper control of crime), 21(2)(f) (highly sensitive personal information), 21(3)(b) (law enforcement investigation), 49(a) (personal information subject to law enforcement exemption) and 49(b) (personal privacy). Some of the withheld information in the report had also been withheld under section 14(2)(a) (law enforcement report), but the ministry withdrew its reliance on that exemption at the inquiry.

## **DISCUSSION:**

[8] The issue in this appeal is whether the ministry appropriately applied the compassionate reasons exception in section 21(4)(d) when it decided to withhold some personal information responsive to the appellant's access request.

[9] Section 21(4)(d) permits an institution to disclose personal information about a deceased individual to a spouse or close relative of the deceased individual, if the institution disclosing the information is satisfied that, in the circumstances, the disclosure is desirable for compassionate reasons. Section 21(4)(d) is one of the exceptions to the general rule that an institution must refuse to disclose personal information to any person other than the individual to whom the information relates.

[10] The appellant submits that section 21(4)(d) requires that more information should be disclosed to him. The appellant is particularly interested in obtaining access to any note the deceased may have written expressing his wishes should he die.

[11] For section 21(4)(d) to apply, three requirements must be met:

1. The records must contain the personal information of a deceased individual;
2. The appellant must be a spouse or close relative of a deceased individual; and
3. Disclosure of the personal information of the deceased is desirable for compassionate reasons, in the circumstances of the request.

[12] The parties agree that the appellant is a close relative of the deceased individual for the purposes of section 21(4)(d).

[13] The parties to the appeal also do not dispute that the records at issue contain personal information of the deceased.

[14] The ministry submits that the information it withheld is also personal information of affected parties and the appellant accepts this. I have reviewed the withheld information and agree that it contains personal information of affected parties, including information about what affected parties said and did on the day of the deceased relative's death. I note that the Occurrence Summary also contains the appellant's name and contact information, but this information has been disclosed to him. There is no personal information of the appellant in the report.

[15] The ministry disclosed a significant amount of the information in the records at issue to the appellant, including personal information of the affected parties, in order to provide the appellant with an understanding of the events leading up to and surrounding the death of his deceased relative. The ministry withheld some information because it considered it the personal information of affected parties and the affected parties clearly opposed its disclosure. The ministry submits that its decision struck a reasonable balance between the interests of the appellant and of the affected parties.

[16] I have reviewed the records at issue. I uphold the ministry's application of section 21(4)(d) to the records for the reasons outlined below.

[17] Information that it is desirable to disclose for compassionate reasons has generally been described as information that will assist a close relative in understanding the events leading up to and surrounding the death of an individual.<sup>1</sup> As noted above, the ministry has disclosed a significant amount of personal information of the deceased to the appellant under section 21(4)(d). I am satisfied that the information disclosed provides the appellant with a fairly full understanding of the events leading up to and surrounding the death of his deceased relative. The withheld information is not critical to understanding the circumstances and key events surrounding the appellant's relative's death.

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<sup>1</sup> PO-3732 at para. 45, citing Order MO-2245.

[18] Where personal information about a deceased individual includes information that also qualifies as that of another individual, previous orders has recognized this is a legitimate circumstance to be considered and weighed in applying section 21(4)(d).<sup>2</sup> Further, the fact that the protection of personal privacy is one of the *Act's* purposes 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.<sup>3</sup>

[19] I am satisfied therefore that the affected parties' objection to disclosure of their personal information is a legitimate consideration, in the circumstances of this appeal, for not applying section 21(4)(d) to disclose the personal information the ministry withheld.

[20] I find that the ministry's decision regarding section 21(4)(d) struck an appropriate balance, in the circumstances, between the interests of the appellant, the deceased and the affected parties that is consistent with the purpose of section 21(4)(d). I am satisfied that the ministry exercised its discretion to not disclose the information it withheld in good faith and for a proper purpose taking into account all relevant factors.

**ORDER:**

I uphold the ministry's decision to withhold in part the records responsive to the appellant's request.

Original Signed by: \_\_\_\_\_  
Hamish Flanagan  
Adjudicator

October 26, 2017 \_\_\_\_\_

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<sup>2</sup> Order MO-2237.

<sup>3</sup> Order MO-2237.