

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3753

Appeal MA17-653

Peel Regional Police Services Board

April 17, 2019

Summary: The appellant submitted a request to the police under the *Municipal Freedom of Information and Protection of Privacy Act* seeking access to transcripts of three calls that her deceased sister made to 911 on two specified dates. The police issued a decision withholding the records in full pursuant to the mandatory personal privacy exemption at section 14(1) of the *Act*. On appeal, the adjudicator finds that the records contain the personal information of the appellant's sister and an affected party. The adjudicator orders the disclosure of the sister's personal information based on the application of the compassionate grounds exception to section 14(1) found in section 14(4)(c) of the *Act*.

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

Orders and Investigation Reports Considered: Orders MO-2237, MO-2245, and MO-2515.

OVERVIEW:

[1] The Peel Regional Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to transcripts of three calls that the requester's deceased sister made to 911 in the days before her death.

[2] The police issued a decision denying access to the responsive records under the personal privacy exemption at section 14(1)¹ of the *Act*.

[3] The requester, now the appellant, appealed the police's decision to this office.

[4] During the mediation stage of the appeal process, the appellant raised the application of the compassionate grounds exception in section 14(4)(c) of the *Act*. The police maintained that section 14(4)(c) does not apply in the circumstances of this appeal, as the records are not associated with the sister's death.

[5] Following discussions with the mediator, the appellant requested that the file be placed on hold while she submitted an additional access to information request to the police. The appellant later advised that while she did obtain some additional information, she still wished to pursue access to the records at issue in this appeal. Accordingly, the file was reactivated. As no further mediation was possible, the file was transferred to the adjudication stage of the appeal process.

[6] During my inquiry, I sought representations from the police, the appellant, and an affected party whose interests may be affected by the outcome of this appeal. I received representations from the police and appellant, but did not receive representations from the affected party.

[7] In this decision, I order the police to disclose the sister's personal information in the records to the appellant on the basis that disclosure is desirable for compassionate reasons.

RECORDS:

[8] The records at issue are audio recordings of three 911 emergency phone calls made by the appellant's sister. I refer to the records as "Records 1, 2, and 3" based on the order in which they were created.²

ISSUES:

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

¹ The police's decision letter listed section 14(1)(f) as a basis for denying access to the records; however, this appears to be an error, since section 14(1)(f) is not an exemption, but rather an exception to the mandatory personal privacy exemption in section 14(1).

² For greater clarity, Records 1, 2, and 3 are 13:06, 5:48, and 3:05 minutes in length, respectively.

- B. Does the mandatory personal privacy exemption at section 14(1) of the *Act* 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] The police withheld information under the exemption at section 14(1), which can only apply to personal information. Therefore, it is necessary to decide whether the records 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,

[...]

(d) the address, telephone number, fingerprints or blood type of the individual,

[...]

(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;

[10] The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs set out in section 2(1) may

still qualify as personal information.³

[11] Section 2(2) provides that personal information does not include information about an individual who has been deceased for more than thirty years.

[12] To qualify as personal information, the information must be about the individual in a personal capacity and it must be reasonable to expect that an individual may be identified if the information is disclosed.⁴

Representations

[13] The police submit that the records in question relate to a series of 911 calls made by the appellant's sister regarding allegations against another individual, the affected party. The police maintain that the records contain personal information of both the appellant's sister and the affected party, as described in paragraphs (a), (b), (d), and (g) of the definition of "personal information" in section 2(1) of the *Act*. The police note that section 2(2) has no application, as the appellant's sister died in 2017.

[14] The appellant's submissions suggest that she accepts that the records contain both her sister's and an affected party's personal information. The appellant says that she is willing to accept redacted copies of the requested records.

Analysis and findings

[15] Based on my review, I find that the three records contain the personal information of the appellant's sister and an affected party. The information relating to the appellant's sister includes her name, age, sex, address, physical description, and other information about her, such as her circumstances at the time of the calls. This information falls within paragraphs (a), (d), and (h) of the definition of "personal information" in section 2(1) of the *Act*.

[16] The information relating to the affected party includes their address, sex, and the appellant's sister's views or opinions about them. This information falls within paragraphs (a), (d), and (g) of the definition of "personal information" in section 2(1) of the *Act*, and is found in Records 1 and 2. Record 3 does not contain the affected party's personal information.

[17] The records do not contain the appellant's personal information. Consequently, whether the personal information is exempt from disclosure is considered under the mandatory exemption in section 14(1), rather than the discretionary exemption in

³ Order 11

⁴ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

section 38(b) of the *Act*.

[18] I understand the appellant's willingness to receive redacted records to mean that she does not seek access to the affected party's personal information. Having reviewed the records, I am satisfied that the affected party's personal information, which includes the sister's views or opinions of the affected party, can reasonably be severed from Records 1 and 2 without yielding records that contain only meaningless snippets of information. Accordingly, the analysis under section 14(1) focuses on whether disclosure of the sister's personal information to the appellant would be an unjustified invasion of the sister's personal privacy.

Issue B: Does the mandatory personal privacy exemption at section 14(1) of the *Act* apply to the information at issue?

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

[20] Sections 14(2) to (4) provide guidance in determining if disclosure of personal information would result in an unjustified invasion of the personal privacy of the individual to whom the information relates. Section 14(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy. Section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy. Finally, section 14(4) identifies information whose disclosure is not an unjustified invasion of personal privacy.

[21] If none of the presumptions in section 14(3) apply, the police must consider the application of the factors listed in section 14(2), as well as other considerations that are relevant in the circumstances of the case. If a presumption listed in section 14(3) has been established, it cannot be rebutted by either one or a combination of the factors set out in section 14(2). A presumption can, however, be overcome if the personal information is found to fall under section 14(4) of the *Act* or if a finding is made under section 16 of the *Act* that a compelling public interest exists in the disclosure of the record that clearly outweighs the purpose of the section 14(1) exemption.

[22] For the reasons that follow, I find that disclosure of the appellant's sister's personal information is desirable for compassionate reasons within the meaning of section 14(4)(c) and therefore would not constitute an unjustified invasion of personal privacy.

Section 14(1)(a) to (e) exceptions

[23] The police maintain that the personal information in the records is not subject to any of the exceptions in sections 14(1)(a) to (e).

[24] The appellant requests my consideration of sections 14(1)(a) and (b), which state:

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

(a) upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access;

(b) in compelling circumstances affecting the health or safety of an individual, if upon disclosure notification thereof is mailed to the last known address of the individual to whom the information relates.

[25] The appellant does not elaborate on the potential relevance of these sections, nor has she or the police provided evidence to justify finding that they apply.

[26] Accordingly, I agree with the police, and I find, that sections 14(1)(a) to (e) do not apply to the records at issue. Therefore, I will focus my analysis on the exception at section 14(1)(f). As noted above, sections 14(2), (3) and (4) are relevant to a determination of whether section 14(1)(f) applies.

Section 14(3) – presumptions

14(3)(b) – investigation into a possible violation of law

[27] The police maintain that disclosure would result in an unjustified invasion of personal privacy due to the operation of the presumption against disclosure at section 14(3)(b), which states:

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

[28] The police submit that the records were created in response to a disturbance and possible assault on two days in 2017, both of which involved possible violations of law. The police note that where a section 14(3) presumption applies, it cannot be rebutted by the factors in section 14(2).

[29] The appellant's representations do not address the relevance of the presumption in section 14(3)(b).

[30] I am satisfied and I find that the presumption in section 14(3)(b) applies to the records at issue. The records were generated as a result of the appellant's sister calling 911 to report alleged violations of law and to request assistance. Although criminal charges were never laid against the sister or any other party, I am satisfied that the personal information in the records was compiled as part of an investigation into a possible violation of law and therefore falls within the presumption at section 14(3)(b). Accordingly, disclosure of the personal information contained in the records is presumed to constitute an unjustified invasion of the appellant's sister's personal privacy. As noted above, the appellant does not seek access to the affected parties' personal information.

14(4) – compassionate grounds

[31] As stated above, a presumption in section 14(3) can only be overcome if the personal information falls under section 14(4) of the *Act* or if there is a compelling public interest in the disclosure of the records that clearly outweighs the purpose of the section 14 exemption (section 16). In this appeal, the public interest override in section 16 has not been raised and, in my view, it does not apply.

[32] Of relevance in this appeal is 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 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.

[33] In Orders MO-2237 and MO-2245, Commissioner Brian Beamish established that the application of section 14(4)(c) requires a consideration of the following questions, all of which must be answered in the affirmative 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?

[34] The police submit that the first two criteria are met, but that in the circumstances of this appeal, there are no compassionate reasons to justify disclosing the records to the appellant.

[35] With respect to the first two questions, I have found that the records contain the

personal information of a deceased individual and I am satisfied that the appellant is the deceased individual's sister, which places her within the definition of "close relative" in section 2(1) of the *Act*. Accordingly, the first two requirements for the application of section 14(4)(c) have been met.

Part 3 – desirable for compassionate reasons

[36] Compassionate reasons have generally been found to exist where information will assist a close relative in understanding the events leading up to and surrounding the death of an individual.⁵

[37] The police maintain that the records at issue relate only to the sister's prior, unrelated interactions with the police regarding an unnamed but identifiable affected party. The police submit that the records do not relate to the sister's death.

[38] In making this determination, the police submit the appellant has been provided all relevant information about her sister's death through the involved investigators who, the police say, remain available to discuss the circumstances. The police maintain that the fact that the appellant's sister is deceased does not eliminate or diminish her privacy interest in the information at issue.

[39] The police also submit that records at issue are highly sensitive because it is reasonable to expect that their disclosure would result in significant personal distress to the affected party. In addition, the police refer to Order MO-3229, where the adjudicator found that calls to 911 for assistance may be considered highly sensitive for the purpose of the *Act*.

[40] The appellant disputes the police's position that the records relate to her sister's "prior, unrelated interactions with police." The appellant submits that her sister's death was recorded on the day that she was found, but that the medical examiner stated that her death occurred at least two days earlier, placing it on the date of her last two calls to 911.

[41] In support of her position that disclosure is desirable for compassionate reasons, the appellant describes the close relationship that she had with her sister and the anguish that her death has caused.

[42] In a separate letter that the appellant addressed to my attention,⁶ she describes how obtaining access to the records will help provide closure. She states:

⁵ Order MO-2245.

⁶ The appellant originally provided this letter before I invited her to submit representations. She appended a copy of the letter to her written representations, once they were formally requested.

I don't know the occurrences of my sister's passing. While I received medical examination reports, I have no report from the Peel Police, who arrived at the scene first and conducted [the] investigation. I do not question anyone's integrity. I am only struggling to receive all available knowledge to understand my sister's last days and breaths she took. I owe it to her and I need it for closure and personal reconciliation.

Based on a compassionate nature of my appeal, I respectfully request granting the release of recordings OR redacted transcripts of [the] three 911 calls. Gaining this knowledge, however tragic and painful, will help with fulfillment of my sisterly duty, provide answers to questions and fill the tormenting void from losing precious life.

Analysis and findings

[43] I am satisfied that in the circumstances of this appeal, disclosure of the sister's personal information to the appellant is desirable for compassionate reasons.

[44] In Orders MO-2237 and MO-2245, Commissioner Brian Beamish made the following findings regarding the breadth of the compassionate grounds exception covered by section 14(4)(c):

... 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." [...] It is recognized that, for surviving family members, greater knowledge of the circumstances of their loved one's death is by its very nature compassionate.

[45] Moreover, in Order MO-2237, Commissioner Beamish stated that in order to determine whether disclosure of a deceased individual's personal information is "desirable for compassionate reasons," the overall circumstances must be considered and weighed.⁷

[46] In Order MO-2515, Adjudicator Laurel Cropley ordered the disclosure of records relating to police involvement with a deceased individual in the weeks before the individual's death. The adjudicator was satisfied that the records, which contained information about a deceased's health and physical state, shed some light on that person's circumstances shortly before their death. In reaching this conclusion, Adjudicator Cropley adopted the approach set out in Order MO-2237, and weighed factors relevant to the issue of whether disclosure was desirable for compassionate

⁷ Order MO-2237 at page 15.

reasons.⁸

[47] I follow the approach set out in these orders. In this appeal, the withheld information relates to three calls for assistance that the appellant's sister made to 911 in the days prior to her death. I agree with the police that the withheld information does not relate directly to the sister's death. I also accept the police's position that this information is personal information that would ordinarily be protected under section 14(1), based on the application of the presumption in section 14(3)(b).

[48] However, in assessing the relevant circumstances, including the appellant's desire to receive this information to gain a better understanding of the circumstances of her sister's death, as well as her sister's right to privacy, I give considerable weight to the fact that the appellant seeks this information as part of her grieving process. I note that the appellant has obtained information regarding the police's investigation into her sister's death from the investigator and medical officer's report. The nature of that information would differ from the information at issue, which is contained in records that were created shortly before her death. I accept, therefore, that the information the appellant has received has not provided her with clarity regarding the circumstances leading up to her sister's death.⁹ I find that more information is desirable to provide closure for the appellant, and I accord significant weight to this finding.

[49] Having considered the records and the parties' representations, and having weighed the sister's privacy interests with the appellant's need to understand and come to terms with her sister's death, I find that, in the circumstances of this appeal, disclosure of the records is desirable for compassionate reasons. I am therefore satisfied that the requirements for the application of section 14(4)(c) have been met, thereby overcoming the presumption at section 14(3)(b).

[50] As a result, I find that disclosure of the appellant's sister's personal information in the records at issue would not be an unjustified invasion of the sister's personal privacy. Therefore, since the exception at section 14(1)(f) applies, section 14(1) does not preclude the police from disclosing this information to the appellant, and I will order the police to disclose it.

ORDER:

1. I order the police to disclose to the appellant severed copies of Records 1 and 2, and Record 3 in its entirety by **May 24, 2019** but not before **May 17, 2019**. In

⁸ Order MO-2515 at pages 8 and 9.

⁹ Order MO-2237.

particular, the following segments of Records 1 and 2 should be **severed and withheld** prior to disclosure:

Record 1: 0:13-0:19, 0:30-0:33, 0:44-1:03, 1:11-1:17, 1:38-2:32, 3:03-3:19, 3:27-3:36, 3:45-3:55, 4:32-4:35, 5:43-5:48, 6:11-6:20, 6:35-6:42, 7:00-8:20, 8:29-9:00, 9:19-9:24, 9:37-9:40, 10:04-10:15, 10:57-11:13, and 11:23-11:29.

Record 2: 0:23-0:25, 1:19-1:30, 2:08-2:13, 2:42-3:15, and 3:37-3:55.

2. 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 pursuant to order provision 1.

Original signed by: _____
Jaime Cardy
Adjudicator

_____ April 17, 2019