

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 MO-3790

Appeals MA17-487

Hamilton Police Services Board

June 25, 2019

**Summary:** The appellant sought access to records relating to her deceased brother, who was shot and killed by the police. The police withheld the responsive records citing the personal privacy exemption under section 14(1). The appellant claims that the exception at section 14(4)(c) applies and that the records should be disclosed to her for compassionate reasons. The adjudicator upholds the police's decision to withhold access to most of the personal information at issue. However, the adjudicator finds that disclosure of the information a witness provided police is desirable for compassionate reasons under section 14(4)(c) as long as the witness' name and contact information is severed.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.M56, as amended, sections 14(1), 14(2)(f), 14(2)(h), 14(3)(b), 14(4)(c) and 38(b).

**Orders and Investigation Reports Considered:** Orders MO-2237, MO-2919, MO-3666-I, MO-3753, PO-3732 and PO-3951.

**Related Appeal:** MO-3792-I

### OVERVIEW:

[1] The appellant filed the following request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the Hamilton Police Services Board (the police):

All 911 dispatch calls and communication and whatever written or audio records pertaining to the [police shooting of my brother on specified date at a specified location].

[2] The police located records responsive to the request but denied the appellant access, claiming that disclosure would constitute an unjustified invasion of personal privacy under section 14(1), taking into consideration the presumption at section 14(3)(b) and the factor favouring privacy protection at section 14(2)(f).

[3] The appellant appealed the police's decision to this office and a mediator was assigned to explore settlement with the parties.

[4] During mediation, the appellant confirmed that she was not interested in pursuing access to records capturing calls or communications relating to two individuals who telephoned 911 to report that a shooting took place. She advised that she is only interested in seeking access to the calls and/or communications leading up to the shooting. Accordingly, the records consisting of the 911 calls made after the shooting took place are no longer at issue. With the scope of records narrowed, the mediator made attempts to contact the remaining affected parties to inquire whether they would be prepared to consent to the release of their information to the appellant. However, the mediator's efforts to contact the affected parties were unsuccessful.

[5] Also during mediation, the appellant raised the possible application of section 14(4)(c) on the basis that the records should be disclosed to her on compassionate grounds. However, the police took the position that section 14(4)(c) does not apply in the circumstances of the appeal and did not revise their access decision.

[6] As no further mediation was possible, the file was transferred to the adjudication stage of the appeals process, in which an adjudicator conducts an inquiry. During my inquiry, I invited representations from the police and the appellant, which were exchanged between the parties in accordance with this office's confidentiality criteria found in Practice Direction 7. I did not attempt to contact the affected parties during the inquiry stage of this appeal.

[7] In this decision, I uphold the police's decision to withhold most of the personal information at issue. Accordingly, the police's decision to withhold access to the 911 audio recording, event print-out and dispatch communications relating to the domestic incident is upheld. The police's decision to withhold access to the name and contact information of the individual who provided the police with information about the appellant's brother in a 911 call is also upheld, but I order the police to disclose the information this individual provided the police about the appellant's brother.

[8] The remaining personal information at issue relating to the appellant's brother is withheld on the basis that it cannot be reasonably severed from the exempt personal information of other individuals or police code information that was removed from the scope of the appeal.

## **RECORDS:**

[9] The records at issue in this appeal were created the day the appellant's brother was shot. The records contain information two individuals provided police when they called 911 for police assistance. One individual reported a domestic incident and the other called the police to report that an individual matching the appellant's brother's description was "acting aggressively toward unknown persons."

<b>Record No.</b>	<b>Description of record</b>	<b>Number of pages/ length of audio recording</b>
1	911 Audio recording of witness	7:20 minutes
2	Event print-out of 911 audio recording of witness	6 pages
3	911 Audio recording relating to domestic incident	7:26 minutes
4a	Event print-out of 911 audio recording relating to domestic incident	7 pages
4b	Event print-out of radio transmissions between dispatch and officers	133 page
5	Audio recording of radio transmissions between dispatch and officers	32:19 minutes

## **PRELIMINARY ISSUE:**

[10] During my inquiry for this appeal, the police were asked to confirm whether any portions of the radio transmissions between dispatch and officers had been disclosed. In response, the police advised that the event print-out and audio recording of the radio transmissions between dispatch and officers were removed from the scope of the appeal. However, my review of the Mediator's Report, Notice of Inquiry and submissions of the appellant suggests that these records were not removed from the scope of this appeal.<sup>1</sup> Accordingly, I confirm that these records remain within the scope of the appeal and I will go on to determine whether disclosure to the appellant would constitute an unjustified invasion of personal privacy of other individuals under section 14(1), as claimed by the police in their access decision.

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<sup>1</sup> I also note that the Notice of Inquiry sent to the police identified that the police dispatch communication records were at issue in the appeal.

[11] I note that these records contain police code and numerical information used by police agencies to classify police responses and communications to dispatch. This office has consistently held that police operational codes qualify for exemption under sections 8(1)(e) or (l) (law enforcement). These codes have been found to include ten codes and other codes that represent common phrases, particularly in radio transmissions that identify areas being patrolled or types of incidents reported or responded to.<sup>2</sup>

[12] Though the police claimed that the discretionary law enforcement exemptions in sections 8(1)(e) and (l) applied to the police code information in the records that were the subject of MO-3792-I, it appears that they did not assert a similar claim in this appeal. However, taking into consideration the police's position that they thought the dispatch records were not at issue, and the appellant's position in the related appeal that she was not interested in pursuing access to any police code information, I have removed this information from the scope of this appeal.

[13] Accordingly, the discussion below will focus on whether the withheld personal information in the records should be disclosed to the appellant, taking into consideration the compassionate grounds exception at section 14(4)(c).

## **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 personal privacy exemption under section 14(1) apply to the information at issue?

## **DISCUSSION:**

### **Do the records contain "personal information" as defined in section 2(1) and, if so, to who does it relate?**

[14] There does not appear to be a dispute that the withheld records that are at issue contain personal information as defined in section 2(1). The police take the position that the withheld information constitutes the personal information of both the deceased individual and the two affected parties. In their representations, the police advise that one of the affected individuals called the police regarding "a domestic incident" and that the other individual called the police to report that "a person was acting aggressively towards unknown persons."

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<sup>2</sup> Order PO-3941.

[15] The appellant's submissions do not address the question of whether the records contain the personal information of other individuals, including her deceased brother.

[16] Having reviewed the records, I am satisfied that the records contain the personal information of the appellant's brother and the two individuals who called 911. Records 3, 4a and 5 also contain information that the individual reporting a domestic incident provided to the police. This information contained in these records relates to the individual seeking police assistance but also contains information this individual provided to the police about the appellant's brother. For the remainder of this order, I will refer to this individual as the complainant.

[17] Records 4b and 5 also contain information relating to the appellant's brother exchanged between dispatch and police officers.

[18] Records 1 and 2 mostly contain information an individual provided police about the appellant's brother. This individual called 911 to report his observations of the appellant in a public space. In doing so, the individual provides a description of the appellant's brother to the police and describes what he observed. In the audio recording of the 911 call, this individual is only identified by his first name. This individual's name, telephone number and address are identified in the event print-out. For the remainder of this order, I will refer to this individual as the witness.

[19] I note that a small portion of Record 2 appears to contain information the appellant's brother provided the police about himself. This information appears to have been added to the event print out containing details of the witness' 911 call.

[20] Having regard to the above, I find that the records contain the personal information of the appellant's brother, the witness and the complainant. Specifically, I find that the records contain these individuals' names, ages and other information, as defined in paragraphs (a), (b), (d) and (h) of the definition of "personal information." The records do not contain information which identifies the appellant and thus I am satisfied that the records do not contain her personal information.

[21] I am also satisfied that the information contained in the records exchanged between dispatch and the officers does not constitute the personal information of those police employees, since the officers were acting in their professional capacities.<sup>3</sup>

**Does the mandatory personal privacy exemption at section 14(1) apply?**

[22] Where an individual seeks access to the personal information of another

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<sup>3</sup> 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 unless the information reveals something of a personal nature about the individual (See Order PO-2225).

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. The parties have not claimed that any of the exceptions in paragraphs (a) to (e) apply, and I am satisfied that none apply. Accordingly, 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.

[23] 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.

[24] 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(1). 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.<sup>4</sup> The appellant submits that disclosure of the records to her would not constitute an unjustified invasion of personal privacy under section 14(1), given the application of section 14(4)(c) in the circumstances of this appeal.

***Does the presumption at section 14(3)(b) apply?***

[25] The police take the position that the presumption at section 14(3)(b) applies because the records were created in response to 911 calls made by individuals making requests for police assistance.

[26] Section 14(3)(b) 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;

[27] 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.<sup>5</sup>

[28] Having considered the records along with the police submissions, I am satisfied that the records were created as part of the police’s investigation into a possible violation of law, namely a *Criminal Code* offence. As the presumption only requires that

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

<sup>5</sup> Orders P-242 and MO-2235.

there be an investigation into a possible violation of law, it applies even if no proceedings were commenced. Accordingly, I find that the presumption at section 14(3)(b) applies in the circumstances of this appeal. 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. However, for the sake of completeness, I have decided to also consider the possible application of the factors weighing in favour of privacy protection. As seen below, these factors can also be relevant circumstances for the purposes of section 14(4)(c).

***Do any factors under section 14(2) weighing in favour of privacy protection apply?***

*14(2)(f): highly sensitive*

[29] The police submit that the factor weighing in favour of privacy protection at section 14(2)(f) applies. Section 14(2)(f) states:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether, the personal information is highly sensitive;

[30] To be considered highly sensitive, there must be a reasonable expectation of significant personal distress if the information is disclosed.<sup>6</sup>

[31] The police submit that it is reasonable to expect that the affected parties would experience significant personal distress if the withheld information was disclosed to the appellant. In support of this position, the police state:

[t]he affected party was involved in a domestic related incident that prompted the police to be contacted and an investigation commenced.

[32] The police go on to state that "[t]hese records contain particulars of two incidents provided by the affected parties about the appellant's deceased brother."

[33] I have reviewed the records along with the submissions of the parties and am satisfied that disclosure of the information the complainant provided police could reasonably be expected to result in significant personal distress to her. Accordingly, I find that the factor at section 14(2)(f) applies to this information and attribute significant weight to it.

[34] I am also satisfied that disclosure of the details of the other 911 call, along with

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<sup>6</sup> Orders PO-2518, PO-2617, MO-2262 and MO-2344.

the caller's name and contact information could reasonably be expected to result in significant personal distress to this individual, but I attribute less weight to the factor in this instance because the individual did not report an incident which involved him. Instead, this individual reported his observations of the appellant's brother in a public space.

[35] However, I do not find that the withheld information about the appellant's brother is highly sensitive. In any event, I find that, in the circumstances, any sensitivity of the information gathered or exchanged by the police about the appellant's brother is somewhat diminished given his death. The factor at section 14(2)(f) does not apply to this information.

*14(2)(h): supplied in confidence*

[36] Though the police did not specifically raise this factor, their submission that individuals who call the police for assistance provide information with an expectation that the information will be safeguarded gives rise to the factor weighing in favour of privacy protection under section 14(2)(h). Section 14(2)(h) states:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

the personal information has been supplied by the individual to whom the information relates in confidence;

[37] This factor applies if both the individuals supplying the information and the recipient had an expectation that the information would be treated confidentially, and that expectation is reasonable in the circumstances. Thus, section 14(2)(h) requires an objective assessment of the reasonableness of any confidentiality expectation.<sup>7</sup>

[38] Having regard to the records, the submissions of the police and the circumstances of the appeal, I am satisfied that the complainant and witness had a reasonable expectation of confidentiality when they called 911 for police assistance. Accordingly, I find that the factor at section 14(2)(h) applies although for the same reasons set out above, I attribute greater weight to this factor as it relates to the complainant who called 911 to seek assistance for a domestic incident.

[39] On the other hand, I find that there is insufficient evidence before me to support a finding that the factor at section 14(2)(h) applies to the appellant's brother's personal information contained in any of the records. From my view of the records, most of the information contained in the records was not supplied by the brother. Though Record 2

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<sup>7</sup> Order PO-1670.



appears to contain a small amount of information the appellant's brother supplied the police about himself, I take the view that any expectation of confidentiality the appellant's brother had when he provided this information to the police is now diminished given his death.

***Does the compassionate reasons exception at section 14(4)(c) apply?***

[40] The appellant submits that disclosure of the withheld personal information at issue would help her understand her brother's death. In her representations, the appellant states "I need to know how and why my brother was shot and killed by police". The appellant appears to take the position that her brother was unarmed at the time of the shooting. She also suggests that her brother may have had a history of mental illness and advises that a coroner's request has been ordered.<sup>8</sup>

[41] The police claim that the exception at section 14(4)(c) does not apply and that disclosure of the records to the appellant would constitute an unjustified invasion of personal privacy under section 14(1).

[42] Section 14(4)(c) 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.

[43] 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?<sup>9</sup>

*Parts 1 and 2: Do the records contain personal information of a deceased individual and is the requester a "close relative" of that individual?*

[44] The police do not dispute, and I agree, that the records contain the personal

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<sup>8</sup> At the time of writing this order, the coroner's request had not been scheduled.

<sup>9</sup> Orders MO-2237 and MO-2245.

information of a deceased individual and that the appellant is a "close relative"<sup>10</sup> of this individual. Accordingly, I am satisfied that the first two requirements for the application of section 14(2)(h) have been met.

[45] *Part 3: Is the disclosure of the personal information of deceased individual desirable for compassionate reasons, in the circumstances of the request?*

[46] The appellant maintains that she made a request under the *Act* to obtain information to help her understand the circumstances of her brother's death, including obtaining information about events which took place before he was shot.

[47] The *Act* recognizes that it is the grieving individual who is 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."<sup>11</sup>

[48] The police take the position that section 14(4)(c) does not permit the appellant's access to the personal information of other individuals. In support of their position, the police state:

[D]isclosure of the 911 recordings and 911 print outs of the two calls placed to the police contains the personal information of the affected parties and also contained mixed personal information about the [appellant's] deceased brother, therefore a large portion of the records would constitute an unjustified invasion of other affected individual's personal information if released. The compassionate exemption does not permit access to other individual's personal information.

[49] However, section 14(4)(c) contemplates that the "circumstances" to be considered include the fact that the personal information of the deceased is also the personal information of another individual or individuals. In Order MO-2337, Commissioner Brian Beamish ordered the disclosure of records containing the intermingled personal information of identifiable individuals, including the deceased daughter of the requester. In that order, he considered the question of whether the reference to "personal information about a deceased individual" in section 14(4)(c) can include information that also qualifies as that of another individual and found that it could. In that decision, Commissioner Beamish stated:

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<sup>10</sup> The term "close relative" is defined in section 2(1) of the *Act* as a parent, child, grandparent, grandchild, brother, sister, uncle, aunt, nephew or niece, whether related by blood or adoption. There is no dispute in the facts of this appeal that the appellant is the sister of the deceased individual.

<sup>11</sup> Order MO-2245.

In my view, this question should be answered in the affirmative. The circumstances of an individual's death, particularly one that is followed by a police or coroner's investigation, are likely to involve discussions with other individuals that will entail, to a greater or lesser extent, the collection and recording of those individuals' personal information. In my view, an interpretation of this section that excludes any information of a deceased individual on the basis that it also qualifies as the personal information of another individual would be inconsistent with the definition of "personal information", set out above, since the information would clearly qualify as recorded information "about" the deceased individual. It would also frustrate the obvious legislative intent behind section 14(4)(c), of assisting relatives in coming to terms with the death of a loved one.

[50] Commissioner Beamish went on to state:

Accordingly, in my view, it is consistent with both the definition of "personal information" in section 2(1) and the legislative purpose behind this section to interpret "personal information about a deceased individual" as including not only personal information solely relating to the deceased, but also information that qualifies as the personal information of not only the deceased, but another individual or individuals as well.

The conclusion that personal information about a deceased individual can include information about other individuals, raises the further question of how the information of those other individuals should be assessed in deciding what to disclose under section 14(4)(c). In my view, assistance is provided in that regard by the legislative text, which permits disclosure that is "in the circumstances, desirable for compassionate reasons."

Where this is the case, the "circumstances" to be considered would, in my view, 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).

As well, the fact that the protection of personal privacy is one of the *Act's* purposes, articulated in section 1(b), 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.

Accordingly, the fact that the personal information at issue includes information relating to affected parties does not end the discussion of whether section 14(4)(c) applies. As noted above, 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).

[51] I agree with Commissioner Beamish's approach and adopt it for the purposes of this appeal. I note that it has been applied in appeals in which this office ordered the disclosure of personal information of other individuals to close relatives of deceased individuals. For example, in Order MO-3753, Adjudicator Jaime Cardy ordered the disclosure of 911 calls the requester's sister made to the police in the days prior to her death despite a finding that the personal information at issue would ordinarily be protected under the presumption under section 14(3)(b). Adjudicator Cardy found that while the requester had obtained information regarding the police's investigation into her sister's death, the information remaining at issue differed as it was created shortly before the sister's death and thus its disclosure to the appellant was desirable for compassionate reasons.

[52] I also note that in Order PO-3732, Adjudicator Marian Sami ordered that a mother be granted access to audio recordings containing the personal information of individuals interviewed in relation to a workplace fatality investigation into the death of her son. Adjudicator Sami ordered the disclosure of the audio recordings despite finding that the section 14(3)(b) presumption applied and even though the deceased's family had already been provided with transcripts of the interviews. In that decision, Adjudicator Sami stated:

Although the transcripts were "full" transcripts in the sense that they did not omit portions of the interviews, I do not find that the transcripts offer the same information as the records at issue. Having listened to the records at issue, I find that they offer a more complete understanding of the circumstances surrounding the death of the appellant's son, even if that additional meaning is not significant.

Following the broad and all-encompassing approach to what disclosure is desirable on compassionate grounds, this office has repeatedly recognized that "for surviving family members, greater knowledge of the circumstances of their loved one's death is by its very nature compassionate."<sup>12</sup>

[53] I recognize that this office has also declined to apply the compassionate grounds exception at section 14(4)(c) in some situations. However, I note that in recent decisions from this office where the exception was not applied, the adjudicator found that the institution had already granted the grieving family access to most of the requested records. For example, in Interim Order MO-3666-I, the institution had

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<sup>12</sup> Order MO-2237.

disclosed the witness statements to the grieving family, but withheld the names and contact information of the witnesses. The adjudicator in Interim MO-3666-I found that the exception in section 14(4)(c) did not apply to the witnesses' name and contact information. In Order PO-3732, the adjudicator found that the most of the responsive records had been disclosed to the requester and was satisfied that this information provided the grieving family with an understanding of the events leading up to and surrounding the death of their brother. In addition, the adjudicator found that the small amount of personal information remaining at issue in Order PO-3272 was "inextricably intertwined with that of the affected party in a manner that cannot be fully resolved by severing."<sup>13</sup>

[54] The circumstances of this appeal are unique in that the police withheld the responsive records in their entirety. In addition, I note that the records contain many instances of non-responsive police code information intertwined with the personal information at issue.

#### Decision and analysis

[55] Based on my review of the information available to me, I am satisfied that the appellant continues to grapple with issues related to her brother's sudden death. I give significant weight to the fact that the appellant made the request in an effort to obtain information regarding the circumstance of her brother's death and did so to assist her with the grieving process. I also considered the privacy interests of her brother but take the view that his privacy interests are somewhat diminished by his death. In addition, little weight can be attributed to his privacy interests given that he was shot and killed by the police and the records contain information relating to events which took place the day he was shot.

[56] Accordingly, the issue I must determine is to what extent, if any, does the exception at section 14(4)(c) apply in the circumstances of this appeal.

#### **Records 1 and 2 – personal information of the appellant's brother contained in the witness' 911 audio recording and event print-out**

[57] I found that the presumption at section 14(3)(b) applies to the information the witness provided police in his 911 call along with the information the appellant provided the police appearing in the event print out. I also found that the factors under sections 14(2)(f) and (h) apply to the information provided by the witness but did not attribute significant weight because the witness did not report an incident that involved him. Rather, he was a bystander who called police to report that the appellant's brother "was acting aggressively towards unknown persons" in a public space. However, I found that

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<sup>13</sup> Order PO-3732 at page 13.

the factors under sections 14(2)(f) and (h) did not apply to the information the appellant's brother provided the police about himself.

[58] In my view, disclosure of the witness' observations along with the information the appellant's brother provided to the police to the appellant is desirable as it would enable her to access information which describe her brother's state of mind shortly before his death. In addition, disclosure of this information would assist the appellant to better understand events which took place the same day her brother was shot by police. Accordingly, I find that the compassionate grounds exception at section 14(4)(c) applies to this information. Later in these reasons, I will go to determine whether this information can be reasonably severed from information not at issue in this appeal.

[59] However, I uphold the police's decision to deny access to the name and contact information of the witness contained in the audio recording and event print-out. In my view, disclosure of the witness' name and contact information to the appellant is not desirable for compassionate reasons as it would not provide any greater detail or context to the individual's observations the day the appellant's brother was shot. Accordingly, I find that the compassionate grounds exception does not apply to this information and uphold the police's decision to deny the appellant access to this information under the personal privacy exemption under section 14(1).

**Records 3, 4a and 5 – mixed personal information about the complainant and appellant's brother contained in the complainant's 911 audio recording, event print out and dispatch radio transmissions**

[60] I found that the presumption at section 14(3)(b) and factors weighing in favour of privacy protection under sections 14(2)(f) and (h) apply to the information the complainant provided police. Record 3 is the audio recording of the complainant's 911 call to police. The complainant called 911 to report a domestic incident involving the appellant. Record 4a contains the event print-out of the 911 call. Some of the information the complainant provided police is reproduced in the audio recording of the communications between dispatch and the officers involved in locating the appellant's brother (Record 5).

[61] Though the records contain the personal information of both the complainant and the appellant's brother, I assigned significant weight favouring the privacy of the complainant given that she called 911 for the police to respond to a domestic incident.

[62] Having regard to the submissions of the appellant, it is evident that she is aware that her brother was involved in a domestic incident the day he was shot by the police. Though disclosure of the information the complainant provided police about the incident may result in the appellant having a better understanding about events that took place the day he was shot, the record also contains highly sensitive information the complainant provided the police about herself. In my view, the complainant had a reasonable expectation that this information would be treated confidentially.

[63] For the reasons stated above, I find that disclosure of the personal information contained in Records 3, 4a and 5 that the complainant provided the police is not desirable for compassionate reasons. Accordingly, I find that the compassionate grounds exception at section 14(4)(c) does not apply to these records and uphold the police's decision to deny the appellant access under the personal privacy exemption under section 14(1).

**Records 4b and 5 – personal information of the appellant's brother exchanged between dispatch and officers contained in the event print-out and audio recording of the radio transmissions**

[64] I found that the presumption at section 14(3)(b) applies to this information but that the factor weighing in favour of privacy protection at section 14(2)(f) carries insignificant weight.

[65] The records contain information exchanged between dispatch and the officers involved in the search and location of the appellant's brother. Given that the appellant's brother was shot by police shortly after they located him, I am satisfied that disclosure of the audio recording and event print-out of dispatch communications would provide the appellant with better information about her brother's death. Given that the only personal privacy interests in these records belong to her brother, I am satisfied that disclosure to her is desirable for compassionate reasons.

[66] Accordingly, I find that the compassionate grounds exception at section 14(4)(c) applies to these records. I will go to determine whether the appellant's brother's personal information contained in these records can be reasonably severed from the complainant's information I found exempt under section 14(1) or information that is not at issue in this appeal.

*Can the personal information at issue to which the exception at section 14(4)(c) applies reasonably be severed from information found exempt under section 14(1) or not at issue?*

[67] Section 4(2) obliges the police to disclose as much of any responsive record as can reasonably be severed without disclosing material that is exempt, or in this case non-responsive. Section 4(2) requires an institution to consider what information can reasonably be severed and disclosed. Previous decisions from this office have consistently held that an institution is not required to sever the record and disclose portions where to do so would reveal only "disconnected snippets," or "worthless" or "meaningless" information.<sup>14</sup>

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<sup>14</sup> See Order PO-1663, *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner)*, (1997), 2004 CanLII 39011 (ON CA), 192 O.A.C. 71 (Div. Ct.).

[68] As noted above, I removed the police code and numerical information in the records from the scope of the appeal on the basis that the appellant indicated in a related appeal that she was not interested in pursuing access to this information.

[69] I have found above that the section 14(4)(c) exception applies to the appellant's brother's personal information contained in Records 1, 2, 4b and 5. I am satisfied that the witness' first name contained in the audio recording of his 911 call (Record 1) can be reasonably severed from the record. I have reviewed the audio recording and am satisfied that the only identifying information is the witness' first name. The remaining information contained in the 911 call describes the witness' observations of the appellant's brother in a public space. This audio recording does not appear to contain police code information.

[70] I am also satisfied that witness' name, address and telephone number can be reasonably severed from event print-out of his 911 call (Record 2). Though the event print-out contains some police code information, I am satisfied that this information can be reasonably severed from the appellant's brother's personal information contained in the record.

[71] Though I am satisfied that disclosure of the appellant's brother's personal information in the audio recording and event print-out of dispatch communications (Records 4b and 5) to the appellant is desirable for compassionate reasons, I find that the brother's personal information in Record 5 is inextricably intertwined with the complainant's personal information found exempt under section 14(1). As noted above, information the complainant provided the police in her 911 call is reproduced in an audio recording of dispatch communications (Record 5). In addition, one of the officers' reporting to dispatch, also responded to the complainant's 911 call and appears to be with the complainant while updating dispatch.

[72] In addition, Records 4b and 5 contain a considerable amount of police code and numerical information not at issue in this appeal. I note that previous decisions from this office have recognized the difficulty of severing non-exempt information from exempt police code and numerical information.<sup>15</sup> In my view, the vast amount of police code and numerical information contained in Records 4b and 5, along with the fact that much of it is in audio format, does not permit reasonable severance of the records. In addition, I find that if the police were to sever the police code information contained in the event print-out of the dispatch communications (Record 5), the result would be a 133 page record that contains disconnected snippets of information. Though the event print-out contains information relating to the appellant's brother, the vast majority of the information contained in this record identifies the location of the various officers responding to the domestic incident and shooting using police codes and other

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<sup>15</sup> See for example, Order PO-3016, PO-3093 and PO-3941.



numerical information.

### **Summary of findings**

[73] I uphold the police's decision to deny access to the audio recording of the 911 call recording (Record 3) made by the complainant who called for police assistance along with any information this individual provided police which is contained in the event print-out and dispatch communication records (Records 4a, 4b and 5). I also uphold the police's decision to deny access to the first name of the witness contained in the 911 call recording (Record 1) and his name and contact number contained in the event print-out (Record 2). The information described above qualifies for exemption under section 14(1), taking into consideration the presumption of section 14(3)(b) and the factors at sections 14(2)(f) and (h).

[74] Although I found that the presumption at section 14(3)(b) applies to the remaining information, I find that the compassionate grounds exception in section 14(4)(c) applies to the appellant's brother's personal information contained in the event-print-out and audio recording of the witness' observations (Records 1 and 2) and radio transmissions between dispatch and officers (Records 4b and 5). However, I only order the disclosure of the audio recording of the witness' 911 call and the event print-out for that call (Records 1 and 2) on the basis that these records can be reasonably severed. The personal information of the complainant contained in the audio recording of dispatch communications (Record 5) is inextricably intertwined with the appellant's brother's personal information. In addition, the event print of the dispatch communications (Record 4b) cannot be reasonably severed without rendering a record with disconnected or meaningless bits of information.

### **ORDER:**

1. I order the police to disclose to the appellant a redacted copy of the audio recording of the witness statement (Record 1), as follows: 0:00-1:36, 1:43-2:24, 2:26-3:08, 3:10-7:09, 7:11-7:20. I also order the police to disclose a severed copy of the event print-out of this audio recording (Record 2) with the witness' name and contact information removed. The police are to disclose this information to the appellant by **July 31, 2019** but not before **July 26, 2019**. For the sake of clarity, I have highlighted the portions of the event print-out (Record 2) accompanying the police's copy of this order that **should not** be disclosed to the appellant. The police must also remove the police code and numerical information from this record before providing a copy to the appellant.
2. I uphold the police's decision to deny the appellant access to the remaining information.

3. 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 provisions 1 and 2.

Original signed by \_\_\_\_\_

Jennifer James  
Adjudicator

June 25, 2019 \_\_\_\_\_