

Information and Privacy Commissioner,
Ontario, Canada



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

INTERIM ORDER MO-3792-I

Appeal MA18-96

Hamilton Police Services Board

June 25, 2019

Summary: The appellant seeks access to records relating to her deceased brother, who was shot by police approximately two weeks after she requested that they conduct a mental health check on him. The police granted the appellant partial access to responsive records but claim that disclosure of the remaining records would constitute an unjustified invasion of personal privacy under section 38(b). The appellant takes the position that the withheld information should be disclosed to her for compassionate reasons and alleges that the police did not conduct a reasonable search for records relating to a specified officer. The adjudicator upholds the police's search, but orders them to disclose the information withheld under the personal privacy exemption based on her finding that the compassionate grounds exception in section 14(4)(c) applies.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.M56, as amended, ss. 2(1) definition of "personal information," 14(1), 14(2)(f), 14(2)(h), 14(3)(b), 14(4)(c), 17, and 38(b).

Orders and Investigation Reports Considered: Order MO-2237.

Related Order: MO-3790

OVERVIEW:

[1] The appellant filed a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) with the Hamilton Police Services Board (the police) for records pertaining to her deceased brother. The appellant specified a time period of approximately four months prior the day her brother was shot and killed by the police.

[2] The police issued an access decision advising that they located records responsive to a mental health wellness check the appellant requested the police conduct on her brother approximately two weeks before he was shot. The police's decision granted the appellant partial access to her own information contained in an occurrence report along with the event remarks. The decision also granted the appellant full access to the audio recording of her 911 call to police. The police denied access to the remaining information claiming that disclosure would constitute an unjustified invasion of personal privacy under section 38(b). The police also claim that some portions of these records contain police code and numerical information which qualify for exemption under section 38(a) in conjunction with sections 8(1)(e) and 8(1)(l) (law enforcement).

[3] The appellant appealed the police's access decision to this office and a mediator was assigned to explore settlement with the parties. The police conducted a further search for records during mediation and issued a supplemental decision letter.

[4] In its supplemental decision, the police advised that they located additional officers' notes relating to the mental health wellness check and provided the appellant with partial access to these records. The police claim that disclosure of the withheld information in the officers' notes would constitute an unjustified invasion of personal privacy under section 38(b).

[5] The police also located an occurrence report, event remarks and notes of four police officers relating to their investigation of a suspicious person the day the appellant's brother was shot. These records relate to the appellant's brother and were created approximately two weeks after the appellant called the police to request a mental health wellness check for him. The police take the position that these records are outside the scope of the appellant's request, while arguing concurrently that disclosure of these records to the appellant would constitute an unjustified invasion of personal privacy under section 38(b).

[6] The police also claim that portions of all the records located as a result of their further search contain non-responsive information or qualify for exemption under section 38(a) in conjunction with the law enforcement provisions at sections 8(1)(e) and 8(1)(l).

[7] During mediation, the appellant confirmed that she is not interested in pursuing access to the police code and other numerical information withheld under section 38(a). The appellant also confirmed that she was not seeking access to the information the police identified as non-responsive to her request.

[8] Also during mediation, the appellant took the position that that information withheld under the personal privacy exemption under section 38(b) should be disclosed to her on compassionate grounds under section 14(4)(c). In addition, the appellant advised that she believed that additional records should exist.

[9] No further mediation was possible and the appeal was moved to the adjudication stage of the appeals process in which an adjudicator conducts an inquiry.

[10] 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 set out in Practice Direction 7. I did not attempt to contact the affected parties during the inquiry stage of this appeal.

[11] As explained below, I find that the compassionate grounds exception at section 14(4)(c) applies in the circumstances of this appeal and order to the police to disclose the withheld personal information to the appellant. However, I find that the police's search for responsive records is reasonable and dismiss this part of the appeal.

RECORDS:

[12] The records consist of police officer notes, occurrence reports and time stamped event remarks generated in response to two 911 calls made to the police. The 911 calls relate to two separate incidents – a mental health wellness check requested by the appellant a couple of weeks before her brother was shot and killed by police and a report of a suspicious person to the police made by an individual the day he was shot. The records are described in the chart below:

Page Number	Description of Records	
1-2	Occurrence report	Mental wellness check
3-4	Time stamped event remarks	Mental wellness check
5-7	Police officer's notes	Mental wellness check
8-9	Occurrence report	Report of a suspicious person
10	Time stamped event remarks	Report of a suspicious person
11-15	Notes of four police officers	Report of a suspicious person
16-17	Notes of two police officers	Mental wellness check

PRELIMINARY ISSUE:

Scope of Appeal

[13] The appellant's request sought:

All police calls including 911, correspondence, dispatch communications and notes pertaining to my brother [name] dated from [specified date] up to and including [the day before he was shot].

Pertaining to [name and date of brother].

All records.

[14] A strict reading of the appellant's request suggests that her request does not include records created the day her brother was shot. It appears that the police took a liberal interpretation and identified records created the day her brother was shot as responsive when it conducted their further search during mediation.

[15] However, in their representations, the police take the position that these records fall outside the scope of the appellant's request, while arguing concurrently that disclosure of these records to the appellant would constitute an unjustified invasion of personal privacy under section 38(b).

[16] In my view, a liberal approach to defining the scope of request is appropriate in the circumstances of this appeal given the fact that these particular records were not identified as responsive to the appellant's separate access request (addressed in MO-3790), even though the appellant's request in that appeal seeks access to "any records" relating to the shooting. In my view, pages 8 to 15 (records relating to a report of a suspicious person) "reasonably relate" to the appellant's request that is the subject of MO-3790 but for whatever reason were not identified as responsive records in that appeal. Instead, they are identified in the Index of Records the police prepared for this appeal.

[17] I also note that this office has consistently taken the approach that institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour.¹ Furthermore, there is no evidence that the police contacted the appellant, upon their receipt of her request, to clarify the request or inform her of any possible defect.

[18] Having regard to the above, I have decided to consider the application of the personal privacy exemption under section 38(b) to all of the records before me in this appeal – the occurrence reports, police officer's notes and event remarks relating to the mental wellness check and report of suspicious person set out in the police's Index of Records.

[19] However, for the purposes of determining whether the police conducted a

¹ Orders P-134 and P-880.

reasonable search for records, I have decided not to expand the scope of request to include records created the day the appellant's brother was shot.

[20] Though I have decided to confine my discussion of the police's search to its efforts to locate records relating to the mental health wellness check at this time, I am prepared to continue an inquiry into the issue of whether or not the police conducted a reasonable search for records responsive to the appellant's request addressed in MO-3790 if the appellant advises me that she wishes to pursue this issue as outlined in the order provisions below. In my view, this approach is appropriate taking into consideration the police's advice that they recently changed the way they conduct searches after discovering that confining searches in its Niche RMS² database could produce incomplete results. In addition, as mentioned above, records that should have been identified as responsive to the appellant's request in MO-3790 were instead identified in the Index of Records prepared for this appeal.

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 discretionary personal privacy exemption under section 38(b) apply to the information at issue?
- C. Did the police conduct a reasonable search for responsive records?

DISCUSSION:

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

[21] There does not appear to be a dispute that the withheld portions of the records contain personal information as defined in section 2(1). The police state:

The occurrence reports, officer's notes, a 911 call to the [police] and event chronology all contain the personal information of the deceased and/or an affected party who had placed the call to the police.

[22] The police state that the records contain the "names, addresses, date of birth, phone numbers and gender" of the affected parties.

² RMS stands for Record Management System.

[23] The affected parties are the appellant's brother, the appellant's sister and the individual who called 911 to report a suspicious person the day the appellant's brother was shot.

[24] The appellant's submissions do not question whether the records contain the personal information of other individuals, including her brother. As noted above, the police determined that portions of the records contained the appellant's personal information and disclosed these portions to her.

[25] Having reviewed the records, I am satisfied that the records contain the personal information of the appellant's brother, the appellant and their sister. The information relating to the appellant's brother was either provided by him, a witness who called 911 or the appellant.

[26] Pages 1-7 and 16-17 of the records consist of occurrence reports, event remarks and officer's notes relating to a mental health wellness check conducted by police. These records contain information the appellant provided the police when she made the request along with information the appellant's brother provided to police when they located him. Also included is a phone number the appellant provided the police for her sister.

[27] Pages 8-15 of the records consist of occurrence reports, event remarks and officer's notes generated the day the appellant's brother was shot. The records contain information the witness provided police regarding a suspicious person. Though the police submit that the records contain the witness' personal information, I confirm that the records do not contain identifying information, such as his name or contact information; therefore, the information about this witness is not his "personal information". The officers' notes contain information the appellant's brother provided police about himself and the appellant when they located him.

[28] Having regard to the above, I find that the records contain the appellant's brother's name, age and other information, as defined in paragraphs (a), (b), (d) and (h) of the definition of "personal information". I also find that the records contain a very small amount of personal information of the appellant and her sister. As noted above, I find that the records do not contain the personal information of the witness who called in a report of a suspicious person. I am satisfied that the information provided by the caller does not render him identifiable, because it does not contain any personal information, such as his name, address or telephone number, as defined in section 2(1), or any other information that could serve to identify him. Although I am ordering some information this witness provided (found in different records from those at issue here) to be disclosed in MO-3790, I have ordered his name and address to be severed prior to disclosure, so he is not identifiable.

[29] Accordingly, I find that the records only contain personal information relating to the appellant, her brother and sister. The personal information contained in the event remarks and occurrence report relating to the 911 call reporting a suspicious person,

relates solely to the appellant's brother.

Does the discretionary personal privacy exemption under section 38(b) apply to the information at issue?

[30] Since I found that the records contain the personal information of the appellant along with her brother's and sister's personal information, section 36(1) of the *Act* applies to the appellant's access request. Section 36(1) gives individuals a general right of access to their own personal information held by an institution. Section 38 provides a number of exemptions from this right.

[31] Under section 38(b), where a record contains personal information of both the appellant and another individual, and disclosure of the information would be an "unjustified invasion" of the other individual's personal privacy, the institution may refuse to disclose that information to the requester. Since the section 38(b) exemption is discretionary, the institution may also decide to disclose the information to the appellant.

[32] Here, in addition to the appellant's own personal information, the records also contain the personal information of her brother and her sister.

[33] Sections 14(1) to (4) provide guidance in determining whether disclosure of the information would be an unjustified invasion of personal privacy under section 38(b).

[34] If the information fits within any of paragraphs (a) to (f) of section 14(1), disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 38(b). The parties have not claimed that any of the exceptions in paragraphs (a) to (e) apply, and I am satisfied that none apply.

[35] Sections 14(2) and (3) also 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.

[36] In determining whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy under section 38(b), this office will consider, and weigh, the factors and presumptions in sections 14(2) and (3) and balance the interests of the parties.³ I will first consider the application of section 14(2) and (3), then move to the compassionate grounds provision at section 14(4)(c).

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

[37] If any of paragraphs (a) to (h) of section 14(3) apply, disclosure of the

³ Order MO-2954.

information is presumed to be an unjustified invasion of personal privacy under section 14(1).

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

[39] Section 14(3)(b) does not apply if the records were created after the completion of an investigation into a possible violation of law.⁴ 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;

[40] 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

[41] Having regard to the records along with the police submissions, I am satisfied that the records relating to the report of a suspicious person were created as part of the police's investigation into a possible violation law, namely a *Criminal Code* offence. As the presumption only requires that there was 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 to this information.

[42] However, I find that the presumption at section 14(3)(b) does not apply to the records which were created in response to the appellant's request that the police conduct a mental wellness check on behalf of her brother. Previous decisions from this office have found that the requirements of section 14(3)(b) are not met when the police exercise their authority under the *Mental Health Act*.⁶ Based on my review of the records, I am satisfied that the purpose of the police's involvement was to check on the appellant's brother's wellbeing and determine whether there was a need to exercise their authority under the *Mental Health Act*.

⁴ Orders M-734, M-841, M-1086, PO-1819 and MO-2019.

⁵ Orders P-242 and MO-2235.

⁶ Orders MO-1384, MO-1428, MO-3063, MO-3465 and MO-3594.

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

[43] 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.⁷

[44] The list of factors under section 14(2) is not exhaustive. The institution must also consider any circumstances that are relevant, even if they are not listed under section 14(2).⁸

[45] The police claim that the factors weighing in favour of privacy protection at sections 14(2)(h) and (f) apply to the circumstances of this appeal.

14(2)(f): highly sensitive

[46] The police submit that the factor weighing in favour of privacy protection at section 14(2)(f) applies to the records. 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;

[47] To be considered highly sensitive, there must be a reasonable expectation of significant personal distress if the information is disclosed.⁹

[48] The police's submissions on this point are scant. The police states:

This section is [relied] upon due to the fact that all personal information is regarded as, highly sensitive [as] it protects the privacy for all to whom it relates.

[49] The test for the applicability of this factor is whether the disclosure of the personal information at issue could reasonably be expected to result in significant personal distress.

[50] I have reviewed the records along with the submissions of the parties and find that the factor at section 14(2)(f) does not apply. I do not find that the withheld personal information about the appellant's brother is highly sensitive and, in my view,

⁷ Order P-239.

⁸ Order P-99.

⁹ Orders PO-2518, PO-2617, MO-2262 and MO-2344.

his privacy interests are somewhat diminished given his death along with the nature of the information about him in the records.

[51] In my view, there is insufficient evidence to establish that disclosure of the information the deceased provided police about himself and the appellant could reasonably be expected to result in significant personal distress to him. Similarly, I am not persuaded by the police's argument that disclosure of information the unidentified witness provided police about the deceased could give rise to the harm contemplated by the factor in section 14(2)(f).

[52] Accordingly, I find that the factor at section 14(2)(f) has no application to the personal information of the deceased brother in the circumstances of this appeal.

[53] The information about the sister consists of her telephone number and I find that section 14(2)(f) does not apply to it.

14(2)(h): supplied in confidence

[54] The police take the position that the factor at section 14(2)(h) applies and state that the withheld information was "...implicitly provided in confidence to the police, the information being essential for the police to properly investigate any possible violation of law." 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;

[55] This factor applies if both the individual 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.¹⁰

[56] I find that there is insufficient evidence before me to support a finding that the factor at section 14(2)(h) applies to the withheld information. The police claim that the information at issue was supplied in confidence. However, no identifiable individuals, other than the appellant's brother and his family, are referenced in the records and this information was provided to the police by the appellant's brother but for his sister's telephone number which the appellant provided the police. I find that any expectation of confidentiality the appellant's brother may have had when he provided this

¹⁰ Order PO-1670.

information to the police about himself is now diminished given his death.

[57] Accordingly, I find that the factor at section 14(2)(h) has no application in this appeal.

Summary

[58] The only information at issue in the records that could identify an individual other than the appellant's brother, relates to the appellant and her sister. In my view, it would be absurd¹¹ to withhold the appellant's sister's telephone number, which was provided by the appellant to the police in the context of making a 911 call to request a mental health wellness check. Accordingly, I will order the police to disclose this information contained on page 3 to the appellant.

[59] Based on my consideration of the presumptions and factors in sections 14(3) and 14(2), I am not persuaded that disclosure of the withheld portions of the records relating to the appellant's brother's 911 mental wellness check would result in an unjustified invasion of privacy under section 38(b), even without considering the exception in section 14(4)(c). However, as discussed below, I also find that the exception in section 14(4)(c) applies to all of the information at issue. For that reason, I will consider all of the withheld records together in my discussion of the compassionate grounds exception, below.

[60] As for the records relating to the day the appellant's brother was shot, I have found that the presumption at section 14(3)(b) applies. However, as discussed below, I find that the compassionate grounds exception in 14(4)(c) applies to this information too, so disclosure of these records would not be an unjustified invasion of personal privacy.

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

[61] The appellant submits that disclosure of the withheld information to herself would not constitute an unjustified invasion of personal privacy under section 38(b), given the application of section 14(4)(c) to the circumstances of this appeal.

[62] 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. In her representations submitted during my inquiry leading to MO-3790, the appellant stated that "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

¹¹ Where the requester originally supplied the information, or the requester is otherwise aware of it, the information may not be exempt under sections 14(1) or 38(b), because to withhold the information would be absurd and inconsistent with the purpose of the exemption (See Orders M-444 and MO-1323).

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.¹²

[63] If the compassionate grounds exception at section 14(4)(c) applies, disclosure to the appellant is not an unjustified invasion of personal privacy and the information is not exempt under section 38(b).

[64] The police claim that section 14(4)(c) does not apply and that disclosure of the withheld information in the records to the appellant would constitute an unjustified invasion of personal privacy under section 38(b). However, most of the remaining personal information at issue in this appeal is information the appellant's brother or the appellant provided police about themselves. Also withheld were the observations an unidentified witness provided to the police about the appellant's brother, which I found constitutes the appellant's brother's personal information.

[65] 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.

[66] 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?¹³

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

[67] The police do not dispute and I find that the records contain the personal information of a deceased individual (the appellant's brother) and that the appellant is a

¹² At the time of writing this order the coroner's request had not been scheduled.

¹³ Orders MO-2237 and MO-2245.

"close relative"¹⁴ of this individual. Accordingly, the first two requirements for the application of section 14(4)(c) have been met.

Part 3 – Is the disclosure of the personal information of deceased individual desirable for compassionate reasons, in the circumstances of the request?

[68] After the death of an individual, it is that person's 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."¹⁵

[69] Personal information about a deceased individual can include information that also qualifies as that of another individual. In this case, the remaining personal information of the appellant's brother appears in the records along with the personal information of the appellant. Accordingly, 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).¹⁶

[70] I found that the presumption at section 14(3)(b) applies to the officer's notes, event details and occurrence reports relating to the report of a suspicious person, as they were compiled and are identifiable as part of an investigation into a possible violation of law. However, I also found that the presumption at section 14(3)(b) does not apply to the withheld personal information relating to the police's mental wellness check. In addition, I found that the factors weighing in favour of privacy protection under sections 14(2)(f) and (h) have no application in the circumstances of this appeal.

[71] The police take the position that section 14(4)(c) does not permit access to other individuals' personal information and state:

... the report, 911 recording and 911 print out of the call to the police contains the personal information of the affected parties and also contains mixed personal information about the [appellant's] deceased brother and his mental health. Therefore a large portion of the records would constitute an unjustified invasion of other affected individual's personal information if released. The institution acknowledges that the Appellant

¹⁴ 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.

¹⁵ Order MO-2245.

¹⁶ Order MO-2237.

claims that she needs this information for compassionate reasons; however, **the release of someone else's personal information regardless for the reason of the request does not supersede the Personal Privacy of affected parties.** The compassionate exemption does not permit access to other individual's personal information. [Emphasis in original]

[72] However, as stated above, section 14(4)(c) contemplates that the "circumstances" to be considered include the fact that the personal information of the deceased can include the personal information of another individual or individuals.¹⁷ As noted above, the remaining personal information found in the records at issue in this appeal is that of the appellant's brother and the appellant.

[73] Based on my review of the file, 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.

[74] I will go on to determine to what extent, if any, does the exception at section 14(4)(c) apply in the circumstances of this appeal.

Pages 1 to 7, and 16 to 17 – Mental Health Wellness Check records

[75] I am satisfied that the disclosure of the withheld information contained in the occurrence report, event remarks and police officers notes relating to the mental health wellness check is desirable for compassionate reasons. The personal information at issue in these records relates to the appellant and her deceased brother. The brother provided most of the personal information at issue to the police himself. It is possible that some of the withheld personal information, such as the appellant's brother's cell phone number and date of birth could have been supplied by the appellant when she made her 911 call.

[76] In my view, any privacy interests the appellant's brother's may have had 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 that occurred a relatively short time frame before he was shot.

[77] In my view, disclosure of the withheld personal information in pages 1 to 7 and 16 to 17 would provide the appellant with greater detail and context about an incident

¹⁷ See paragraphs 48-50 in MO-3790 for a further discussion of MO-2237 and the application of the exception at section 14(4)(c) to the personal information of other individuals.

which involved her brother and the police approximately two weeks before he was shot. In particular, disclosure of the personal information at issue would provide the appellant with some insight about her brother's state of mind.

[78] Accordingly, if the presumption at section 14(3)(b) applied to these records, which I found it did not, the presumption would be overcome by the compassionate grounds exception under section 14(4)(c) taking into the circumstances of this appeal, including my finding that no other factors weighing in favour of privacy protection apply. I find, therefore, that the section 38(b) exemption does not apply to this information.

Pages 8 to 15 – Report of a suspicious person records

[79] I found that the presumption at section 14(3)(b) applies to the occurrence report, event remarks and police officers notes relating to the report of suspicious person report. The personal information in these records relates to the appellant and her brother. The personal information contained in these records was provided by the appellant's brother or an unidentifiable witness to the police. Again, as noted above, I take the view that any the appellant's brother's privacy interests are greatly diminished by his death along with the fact that the records contain information about an event that occurred the day he was shot and killed by police.

[80] In my view, disclosure of the personal information at issue would provide the appellant with greater detail and context about events involving the police and her brother which occurred the day he was shot. In particular, disclosure of the unidentifiable witness' observations of the appellant's brother would provide her insight about her brother's state of mind. In addition, disclosure of the appellant's brother's statements to police would provide her greater detail and context of events that took place the day he was shot.

[81] Having regard to the above, I find that disclosure of the withheld information in pages 8 to 15 is desirable for compassionate reasons. As a result of my finding, the application of the presumption at section 14(3)(b) to the records relating to a report of a suspicious person is overcome by the compassionate grounds exception under section 14(4)(c) taking into the circumstances of this appeal, including my finding that no factors weighing in favour of privacy protection apply. I find, therefore, that the section 38(b) exemption does not apply to this information.

Summary

[82] As I have found that the compassionate grounds exception at section 14(4)(c) applies to the circumstances of this appeal, the police are ordered to disclose the information it withheld under the personal privacy exemption at section 38(b).

Did the police conduct a reasonable search for responsive records?

[83] The appellant submits that additional records created by a named officer should exist. As previously discussed in this order, I have decided to confine the appellant's concerns about the reasonableness of the police's search to its efforts to locate records relating to the mental health wellness check.

[84] Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 17.¹⁸ If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

[85] The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.¹⁹ To be responsive, a record must be "reasonably related" to the request.²⁰

[86] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request.²¹

[87] A further search will be ordered if the institution does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.²²

[88] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.²³

Representations of the parties

[89] The appellant takes the position that the police failed to conduct a reasonable search for records relating to one named police officer in relation to her brother. The appellant provided the police with the spelling of the officer's name, though she acknowledges that her spelling may be incorrect. Based on her representations, it appears that the appellant believes that the officer in question was responsible for firing

¹⁸ Orders P-85, P-221 and PO-1954-I.

¹⁹ Orders P-624 and PO-2559.

²⁰ Order PO-2554.

²¹ Orders M-909, PO-2469 and PO-2592.

²² Order MO-2185.

²³ Order MO-2246.

the shot that killed her brother.

[90] In support of her belief that additional records exist, the appellant advises that during meetings and discussions her family participated in with the Special Investigations Unit (SIU)²⁴, the subject officer's name was used by both parties. The appellant advises that the subject officer and her brother "had interactions" the day she requested a mental wellness check and the day he was shot.

[91] The police maintain that they conducted a reasonable search for records in relation to the mental wellness check and submitted three affidavits in support of their position. The affidavits filed by the police indicate that during the request stage they:

- conducted a name-based search in their Niche RMS database and identified the incidents referenced in the appellant's request;
- requested that the officers identified as being involved in the incidents provide their notes; and
- conducted a search on the Nordat database using the appellant's name, address, phone number and incident numbers to search for records.

[92] The police also advise that they conducted a further search for responsive records during mediation. The police advise that they searched their computer-aided dispatch system which identified six officers as "dispatched" and "arrived" to the mental wellness check of the appellant's brother. The police indicate that only one officer was initially linked to the mental health wellness check when it conducted its prior search of its Niche RMS database. In their submissions, the police acknowledge the deficiency of their initial search and advise that they have changed the way they conduct searches for records.

[93] The police advise that of the six officers identified in their further search, one had already provided his notes, another did not have notes and the remaining four officers were asked to provide their notes which resulted in further records being identified.

[94] With respect to the appellant's claim that additional records for a named officer should exist, the police also advise that they checked their Niche Database, Master Notebook and Human Resources department to confirm that they do not currently have, nor have they ever had in the past, an officer by the name provided by the appellant.

²⁴ The SIU is a civilian law enforcement agency, independent of the police, that conducts criminal investigations into circumstances involving police and civilians that have resulted in serious injury, death or allegations of sexual assault.

Decision and analysis

[95] I am satisfied that the police's searches for records relating to the appellant's mental wellness check were conducted by experienced individuals who are knowledgeable in the subject-matter of the request. I am also satisfied that the police provided sufficient evidence demonstrating the steps they took in response to the request for these records, including providing details of the searches carried out, by whom they were they conducted and identifying who was contacted during the search along with the places that were searched.

[96] As noted above, the *Act* does not require the police to prove with absolute certainty that further records do not exist. Instead, the police must provide sufficient evidence to demonstrate that they have made a reasonable effort to identify and locate responsive records.

[97] Having regard to the submissions of the parties, including confidential submissions the police made in their reply representations, I am satisfied that the police's search for responsive records conducted during the request and mediation stage of this appeal for records relating to the mental health wellness check was reasonable.

[98] In my view, the appellant's evidence falls short of establishing a reasonable basis for concluding that further records created by the subject officer on the day the mental wellness check occurred exist.

ORDER:

1. I order the police to disclose the personal information at issue 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 records accompanying the police's copy of this order that **should not** be disclosed to the appellant on the basis that the information was removed from the scope of the appeal or identified as non-responsive.
2. I find that the police's search for responsive records relating to the mental health wellness check was reasonable.
3. Should the appellant wish to pursue the issue of whether or not the police conducted a reasonable search for records responsive to her request addressed in Order MO-3790, she should advise me in writing within 30 days of this order, so that I may seek further representations from the parties. If I do not receive such notice from the appellant, this appeal will be closed.

4. 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.
5. I remain seized of this appeal to address any outstanding issues arising from order provision 3.

Original signed by _____
Jennifer James
Adjudicator

_____ June 25, 2019