

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-3796

Appeal MA17-191

Halton Regional Police Services Board

June 28, 2019

**Summary:** The Halton 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 all records concerning the death of the appellant's adult son. After locating responsive records, including occurrence reports, witness statements, interviews, officer's notes and 911 calls, the police issued a decision to the appellant wherein they provided his son's personal information but withheld his personal information where it was intertwined with the personal information of an affected party. The police relied on sections 38(b), 14(1) and 38(a) in conjunction with section 8(1) to deny access to the withheld information. In this order, the adjudicator upholds the police's decision in part and orders the police to disclose additional information relating to the appellant's son on compassionate grounds under section 14(4)(c).

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, C. M.56, as amended, sections 2(1) (definition of "personal information"), 8(1)(c), 14(1), 14(3)(b), 14(2)(d), 14(2)(f), 14(4)(c) and 38(b).

**Orders and Investigation Reports Considered:** Orders MO-2235, MO-2245, MO-2321, MO-3224, PO-3129, PO-3951.

### OVERVIEW:

[1] The following request was made to the Halton Regional Police Services Board (the police) under the *Municipal Freedom of Information and Protection Privacy Act* (the *Act*):

I am requesting all information regarding the incident the morning of [a specified date] at [a specified address] regarding [the appellant's adult son's] sudden death:

- 911 calls (time and names)
- Time of first arrival on scene
- All officers names and notes who arrived on scene
- All interviews taken in the initial investigation
- All notes of actions pertaining to trying to locate next of kin
- Notes from [a specified detective's] interview with parents, 15 hours after the initial incident (over the phone)
- All scene photos taken that morning
- All video surveillance video collected
- List of all evidence collected
- Timeline of getting to the scene and leaving the scene
- All notes of police officers and other personnel in regards to the follow-up investigation starting [a specified date] when [a specified detective] took over
- All interviews taken to date
- Any additional photos
- Any additional surveillance video

[2] The police identified responsive records and provided access to the records, in part. In denying access to portions of the records, the police relied on section 38(a) (refuse to disclose requester's personal information), in conjunction with the law enforcement exemptions in sections 8(1)(e), 8(1)(l) and 8(2)(a). The police also claimed that disclosure of the records would result in an unjustified invasion of personal privacy under section 38(b), in conjunction with the presumption against disclosure in section 14(3)(b). Finally, the police claim that small portions of the records contain information which is not responsive to the request.

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

[4] During the mediation process, the appellant advised that he is not seeking access to the information marked as non-responsive but is still seeking access to the

other withheld portions of the records.

[5] 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 under the *Act*. As the adjudicator in this appeal, I began this inquiry by seeking the representations of the parties including 26 affected parties. Representations were received and shared in accordance with section 7 of the IPC's *Code of Procedure* and *Practice Direction 7*.

[6] In their representations, the police stated that they are no longer relying on section 8(2)(a) of the *Act* to withhold information and as a result this section is no longer in dispute. Also, the appellant, in his representations, indicated that he is not seeking access to police codes that may appear in the records and as a result that information, and the application of section 8(1)(e) or (l) to that information are no longer issues in the appeal.

[7] In this order, I uphold the police's decision with regard to most of the records at issue; however, I order the police to disclose further personal information of the appellant's son, including a recording of one 911 call, on compassionate grounds.

## **RECORDS:**

[8] The records at issue consist of various police documents, including occurrence reports, officer notes, audio and video statements and an audio of two 911 call. The police have referred to all of the occurrence reports as Record 4, however, I will examine each occurrence report as a separate record. Therefore, with regard to the various occurrence reports identified as Record 4 (37 occurrence reports in total), I will refer to these records as records 4 to 40. The remaining records identified by the police as records 5 to 36 will be identified as records 41 to 73.

## **ISSUES:**

- A. Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?
- B. Does the mandatory exemption at section 14(1) or the discretionary exemption at section 38(b) apply to the information at issue?
- C. Does the discretionary exemption at section 8(1)(c) apply to the information at issue?
- D. Did the institution exercise its discretion under sections 8(1) and 38(b)? If so, should this office uphold the exercise of discretion?

## **DISCUSSION:**

### **Issue A: Do the records contain “personal information” as defined in section 2(1) and, if so, to whom does it relate?**

[9] In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains “personal information” and, if so, to whom it relates. That term is defined in section 2(1), in part, as follows:

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

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

(c) the personal opinions or views of the individual except if they relate to another individual,

(d) the views or opinions of another individual about the individual, and

(e) 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 (a) to (h) may still qualify as personal information.<sup>1</sup>

[11] To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be “about” the individual.<sup>2</sup>

[12] To qualify as personal information, it must be reasonable to expect that an

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<sup>1</sup> Order 11.

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

individual may be identified if the information is disclosed.<sup>3</sup>

[13] The parties do not dispute that the records contain the personal information of affected parties as well as the personal information of the appellant's son.

[14] I note that the police submit that they disclosed most of the appellant's son's personal information under compassionate grounds and that the remaining withheld personal information of his son is intermingled with that of other affected parties' personal information and cannot be further severed. The police submit that severing out the affected parties' identifying information would not necessarily mean that the affected parties would remain anonymous because of the appellant's familiarity with the circumstances surrounding his son's death.

[15] The appellant submits that his son's personal information is not nearly as intertwined with the personal information of affected parties as the police suggest. He submits that virtually everything in the records is about his son.

[16] I have reviewed the records and find that all of them contain the appellant's son's personal information. In addition, I find that the records also contain the affected parties' personal information, including dates of birth, their names along with other personal information about them, information relating to their relationship with the appellant's son and other individuals as well as their personal opinions or views.

[17] In my review of the withheld information, I find the records consist of the following:

- The occurrence reports contain the personal information of the appellant's son, and other identifiable individuals. The personal information includes the names, addresses and other personal identifiers such as age and gender. The occurrence reports also document the incident and include statements made by the individuals the police spoke to and background information about the appellant's son. The only personal information of the appellant's son at issue in these records is intertwined with the personal information of the identifiable individuals (the affected parties). Most of the information contained in the various occurrence reports has already been provided to the appellant except for the personal information of the affected parties who are not members of the appellant's family. One occurrence report contains an investigative technique that the police have withheld under section 8(1)(c) of the *Act*.

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

- A forensic identification report setting out what the police found upon entering the scene and a description of the events. This report was fully disclosed except for identifying information of one individual.
- The police officers' notes detail each officer's actions and observations at or around the scene of the incident, and as such, contain the personal information of the appellant's son. These notes also contain information about other affected parties who the police officers spoke to during or after the incident, including their names, addresses, telephone numbers, dates of birth, what they were doing at the time of the incident, and information they provided to the police regarding their observations, or lack of observation, at the time of the incident. The information qualifies as the personal information of the individuals identified in the records and some of this information qualifies as the personal information of the appellant's son.
- The audio interviews include several interviews with identifiable individuals which includes their names, addresses, in some cases telephone numbers, what they were doing at the time of the incident, and anything they observed surrounding the incident and after the incident. The information qualifies as the personal information of the individuals identified in the records. The audio recordings also include some personal information of the appellant's son. None of this information was disclosed to the appellant.
- The video interviews of two affected parties remain an issue. The video contains the personal information of each of the interviewees as well as the personal information of the appellant's son. None of this information was disclosed to the appellant.
- Two 911 calls that contain the personal information of the appellant's son and two identifiable individuals including their names, addresses, telephone numbers and information regarding their observations. None of this information was disclosed to the appellant.

[18] With regard to the appellant's personal information, previous orders have established that where a record contains both the personal information of the requester and another individual, the request falls under Part II of the *Act* and the relevant personal privacy exemption is the exemption at section 38(b).<sup>4</sup> Some exemptions, including the personal privacy exemption, are mandatory under Part I (section 14(1)) but discretionary under Part II (section 38(b)), and thus in the latter case an institution

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<sup>4</sup> Order M-352.

may disclose information that it would not disclose if Part I is applied.<sup>5</sup>

[19] As Commissioner Beamish stated in PO-3129, the correct approach is to review the entire record, not only those portions remaining at issue, to determine whether it contains the requester's personal information. This record-by-record analysis is significant because it determines whether the record as a whole (rather than only certain portions of it) must be reviewed under Part I or Part II of the *Act*.<sup>6</sup>

[20] While the police have claimed section 38(b) for all of the records, it is apparent, upon my review, that not all of the records contain the appellant's personal information and should not be assessed under this section. Applying this record-by-record approach, I find that 17 records contain the appellant's personal information, including his name along with other personal information about him and his relationship with his son. These records are records 4, 7, 9, 11, 12, 13, 14, 35, 36, 42, 43, 46, 50, 52, 60, 64 and 66. Accordingly, for the severed portions of these 17 records, which I have found to contain the personal information of the appellant's son and/or other individuals, I will consider whether they qualify for the personal privacy exemption under the discretionary exemption at section 38(b) or the discretionary exemption at section 38(a), found in Part II of the *Act*.

[21] As the remainder of the records contain only the personal information of identifiable individuals other than the appellant, I will review the application of the mandatory personal privacy exemption in section 14(1) and the discretionary law enforcement exemption in section 8(1) of the *Act* to these records.

**Issue B: Does the mandatory exemption at section 14(1) or the discretionary exemption at section 38(b) apply to the records?**

[22] Section 36(1) of the *Act* 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.

[23] Under section 38(b), where a record contains personal information of both the requester 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 requester.<sup>7</sup> Section 38(b) reads:

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<sup>5</sup> Orders MO-1757-I and MO-2237.

<sup>6</sup> Order M-352.

<sup>7</sup> See below in the "Exercise of Discretion" section for a more detailed discussion of the institution's discretion under section 38(b).

A head may refuse to disclose to the individual to whom the information relates personal information,

if the disclosure would constitute an unjustified invasion of another individual's personal privacy

[24] If the information falls within the scope of section 38(b), that does not end the matter. Despite this finding, the institution may exercise its discretion to disclose the information to the requester. This involves a weighing of the requester's right of access to his or her own personal information against the other individual's right to protection of their privacy.

[25] In contrast, under section 14(1), where a record contains personal information of another individual but *not* the requester, the institution is prohibited from disclosing that information unless one of the exceptions in sections 14(1)(a) to (e) applies, or unless disclosure would not be an unjustified invasion of personal privacy. In this instance, none of section 14(1)(a) to (e) apply. Section 14(1)(f) reads:

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

if the disclosure does not constitute an unjustified invasion of personal privacy.

[26] In both section 38(b) and section 14 situations, sections 14(2), (3) and (4) of the *Act* provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the individual's personal privacy. The police submit that the withheld personal information of the appellant's son consists of an affected party's personal information that is intermingled with that of the appellant's son. I will consider whether those portions should otherwise be exempt under the personal privacy exemption.

[27] Section 14(2) provides some criteria for the police to consider in making this determination; section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy; and section 14(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

[28] The police submit that they exercised their discretion under section 38(b) giving consideration to the appellant's right to access his own personal information and the right to access for "compassionate" reasons as set out in section 14(4)(c). The police submit that in the circumstances they were not satisfied that disclosing the remaining personal information of the appellant's son to the appellant is desirable for compassionate reasons as doing so would unjustifiably invade the personal privacy of affected parties whose personal information is also in the records. The police submit that the appellant has already been provided with a significant amount of information



with respect to his son's death throughout the course of the investigation.

[29] The appellant was provided with a severed copy of the police's representations and provided his own representations in response. The appellant submits that the police have engaged in an abuse of discretion by refusing to disclose the information "solely because they take umbrage with the Appellant's belief that his son may not have killed himself" submitting that the police even accused the appellant of criminal harassment.

### ***Analysis and findings***

#### *Section 14(3)(b) (investigation into a possible violation of law)*

[30] The police submit that the presumption at section 14(3)(b) is relevant in this appeal. They submit that as they were investigating a sudden death that could have possibly been an offence under the *Criminal Code of Canada*, this presumption applies. The police refer to Order MO-2235 which supports that there only has to be an investigation into a possible violation of law for this presumption to apply. The police submit that although the occurrence was deemed a suicide it was still investigated in regard to a possible violation of law.

[31] The appellant submits that the presumption at section 14(3)(b) cannot apply as the police investigation is not ongoing.

[32] Section 14(3)(b) reads:

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;

[33] With regard to section 14(3)(b) of the *Act*, even if no criminal proceedings were commenced against any individuals, section 14(3)(b) may still apply. As stated in Order MO-2235, the presumption only requires that there be an investigation into a possible violation of law.<sup>8</sup>

[34] I have reviewed the records at issue and find that the presumption at section 14(3)(b) applies to all of the records. I am satisfied that the personal information contained in the records was compiled by the police during their response to an investigation of the death of the appellant's son. I do not accept the appellant's

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<sup>8</sup> Orders P-242 and MO-2235.

submission that since the investigation is not ongoing section 14(3)(b) cannot apply; it is not a requirement that the investigation be ongoing. Accordingly, I find that the personal information was compiled and is identifiable as part of the investigation by the police into a possible violation of law and that the presumption in section 14(3)(b) applies. I will now consider the application of the considerations listed in section 14(2) and whether there are any factors weighing for or against disclosure.

[35] For records that do not contain the appellant's own personal information; that is, the records for which the appropriate personal privacy exemption to consider is the exemption found at section 14(1), the section 14(3)(b) presumption can only be rebutted by a circumstance set out in section 14(4). I address the application of the compassionate grounds provision at section 14(4)(c) below.<sup>9</sup>

[36] For records claimed to be exempt under section 38(b) (ie., records that contain the requester's personal information), this office will consider, and weigh, the factors and presumptions in sections 14(2) and (3) and balance the interests of the parties in determining whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy. I will now consider the application of the considerations listed in section 14(2) and whether there are any factors weighing for or against disclosure.

#### *Section 14(2) factors*

[37] 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.<sup>10</sup> Some of the factors listed in section 14(2), if present, weigh in favour of disclosure, while others weigh in favour of non-disclosure. 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).<sup>11</sup>

[38] The parties' representations raise the possible application of paragraphs 14(2)(d) and (f). The factor at section 14(2)(d), if it applies, would weigh in favour of disclosure, while the factor at section 14(2)(f) would weigh in favour of non-disclosure. These sections state:

(2) 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,

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<sup>9</sup> *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767. Under a section 14(1) analysis, a section 14(3) presumption can also be overridden by the public interest override at section 16, but that provision has not been raised here.

<sup>10</sup> Order P-239.

<sup>11</sup> Order P-99.

(d) the personal information is relevant to a fair determination of rights affecting the person who made the request;

(f) the personal information is highly sensitive;

*Section 14(2)(d) (fair determination of rights)*

[39] The appellant has not pointed to specific factors under section 14(2) that might apply, but in my review of the listed factors, I find that section 14(2)(d) (fair determination of rights) might apply. In his representations, the appellant submits that he is the trustee of his son's estate and he can bring lawsuits on behalf of his son. The appellant submits that victims' families have the right to obtain standing at a Coroner's inquest and the inquest would be better aided if the appellant, as the Estate Trustee, has adequate disclosure "so as to be able to present at any hearing."

[40] However, I give this factor little weight. The police have already disclosed much of the appellant's son's personal information to the appellant and after a review, I will order them to disclose excerpts from the records which I find constitute his personal information that is not too intertwined with the personal information of affected parties. The appellant has failed to illustrate how disclosing the personal information of the affected parties will assist him at a Coroner's hearing.

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

[41] This office has established that, for information to be considered highly sensitive under section 14(2)(f), there must be reasonable expectation of significant personal distress if the information is disclosed.<sup>12</sup>

[42] With regard to factors that may apply under section 14(2), the police refers to section 14(2)(f) submitting that affected parties revealed information of a sensitive nature, including intimate details of personal relationships with the appellant's son. The police also submit that affected parties have contacted them regarding complaints of harassment by the appellant and that releasing their personal information would result in significant personal distress. The police refer to Order MO-3224 where the request was for investigation records resulting from a suicide. The adjudicator found that the records were highly sensitive since they contained particulars of the deceased's death. The adjudicator found that an affected party would experience significant personal distress if information relating to them was disclosed to the appellant, the deceased's parent. As a result, the adjudicator found that section 14(2)(f) weighed in favour of a finding that the disclosure of the records would constitute an unjustified invasion of personal privacy and the records were not released to the appellant under section

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<sup>12</sup> Orders PO-2518, PO-2617, MO-2262 and MO-2344.

14(4)(c) (compassionate grounds).

[43] With regard to the factor at section 14(2)(f) (highly sensitive), the appellant submits that little of the personal nature of the witnesses is revealed in the records.

[44] Following the approach in Order MO-3224, I find that all of the records can be considered to be highly sensitive since they contain information detailing the particulars of the appellant's son's death, the circumstances surrounding it and the nature of his personal relationships with the affected parties. The information that has been withheld is, by its very nature, highly sensitive and deeply private. Further, with regard to the severed portions of the records, I am satisfied, after reviewing the representations and those portions of the records, that there is a reasonable expectation that an affected person would experience significant personal distress if these portions were disclosed to the appellant.

[45] The police have indicated that they were contacted by more than one affected party complaining of harassment by the appellant. Although the appellant takes issue with this submission, calling it hearsay evidence, I accept that the police were contacted by affected parties about unwanted contact by the appellant as the police submitted. As a result, I find that there is a reasonable expectation of significant personal distress if the affected parties' personal information is disclosed to the appellant. Therefore, I find that section 14(2)(f) weighs heavily in favour of a finding that the disclosure of the withheld portions of the records would constitute an unjustified invasion of personal privacy.

*Unlisted factors*

[46] The police have provided submissions on their claim of the exemption under section 8(1)(e). Section 8(1)(e) states:

A head may refuse to disclose a record if the disclosure could reasonably be expected to,

Endanger the life or physical safety of a law enforcement officer or any other person;

[47] In my view, the police's argument on this exemption should be considered as an unlisted factor under section 14(2) weighing against disclosure of the withheld information. In their representations, the police submit that there is sufficient evidence to establish a reasonable basis to conclude that by releasing the withheld portions of the record, the life or physical safety of involved parties will be endangered. The police submit that the appellant has demonstrated behaviour defined as criminally harassing toward involved parties since the date of his son's death. The police submit that if the appellant is provided with the affected parties' personal information, he can do whatever he wants with the records including continue his "tirade of criminal harassment toward individuals who have already expressed a fear of the father of the

deceased and reported his behaviour.”

[48] In his representations, the appellant submits that the police have provided hearsay statements about his alleged criminal harassment of the affected parties. The appellant submits that these submissions are highly prejudicial and inflammatory and the allegation that the appellant has engaged in the criminal harassment of others is completely unsubstantiated.

[49] Although the appellant submits that the allegations against him are completely unsubstantiated, I accept that the police have been contacted in regard to complaints of harassment by the appellant. As a result, I give this unlisted factor significant weight.

[50] With respect to the application of section 38(b) to the records, I previously found that 17 records contain the appellant’s personal information, consisting of his name along with other personal information about him and his relationship to his son [paragraph (h)]. This personal information is contained in various occurrence reports and police notes. Upon review of these records, while all of the appellant’s personal information has been disclosed along with the overwhelming majority of his son’s information, the remaining information is highly sensitive personal information of affected parties. In addition, the presumption at section 14(3)(b) applies to this personal information. I also find that the only factor under section 14(2) favouring disclosure is (d) (fair determination of rights), however, as discussed, I give this factor little weight. Weighing the factors and presumptions, I find that the remainder of the withheld information in the 17 records that also contain the appellant’s personal information qualifies for exemption as its disclosure would constitute an unjustified invasion of personal privacy under section 38(b).

### *Conclusion*

[51] For the records that do not contain the appellant’s own personal information, and are therefore analyzed under section 14(1), I have found that the section 14(3)(b) presumption applies and disclosure of those records would constitute an unjustified invasion of personal privacy, subject to my discussion of the compassionate grounds provision at section 14(4)(c), below.<sup>13</sup>

[52] For the records that are analyzed under section 38(b) because they contain the appellant’s personal information as well as that of other individuals, taking into account the application of the presumption in section 14(3)(b) and the factors favouring disclosure at section 14(2)(d) and the factors favouring privacy protection in section 14(2)(f) and the unlisted factor, endanger the life or physical safety, I find that the

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<sup>13</sup> Even if I were able to consider section 14(2) factors favouring disclosure for these records, I would conclude that disclosure would constitute an unjustified invasion of personal privacy, for the same reasons set out with respect to the records analyzed under section 38(b).

disclosure of the withheld portions of the records would constitute an unjustified invasion of personal privacy, under section 38(b), subject to my review of the exception in section 14(4)(c) (compassionate grounds).

*Absurd result*

[53] I also considered whether the absurd result principle applies in the circumstances of this appeal. According to the principle, whether or not the factors or circumstances in section 14(2) or the presumptions in section 14(3) apply, where the appellant originally supplied the information, or the appellant is otherwise aware of it, the information may be found not exempt under section 14(1), because to find otherwise would be absurd and inconsistent with the purpose of the exemption.<sup>14</sup> One of the grounds upon which the absurd result principle has been applied in previous orders is where the information is clearly within the appellant's knowledge.<sup>15</sup>

[54] The police submit that denying an appellant access to information they provided, or are otherwise aware of, could lead to an absurd result. However, they submit that the right to this information must be balanced with the purpose of the protection of privacy. The police submit that although the appellant provided information, such as some of the names of affected individuals, and was privy to witness statements, the details still remain the personal information of affected parties and that disclosure of this information would inevitably result in an unjustified invasion of these affected parties' personal privacy. The police rely on Order MO-2321 where the adjudicator referenced Assistant Commissioner Goodis in PO-2285 when he stated:

Although the appellant may well be aware of much, if not all, of the information remaining at issue, this is a case where disclosure is not consistent with the purpose of the exemption, which is to protect the privacy of individuals other than the requester.

[55] The police submit that after careful consideration they believe that withholding the information originally supplied by the appellant would not be an absurd result.

[56] The appellant submits that it would be an absurd result not to release the information as the information is clearly within the scope of the appellant's knowledge. The appellant submits that he has a vague understanding of the withheld information as some of it overlaps with what has already been disclosed and to deny access to the full picture would essentially be an absurd result. The appellant proceeded to name who he believes are the witnesses in his representations, in order to show that he was already aware of their identity.

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<sup>14</sup> Orders M-444 and MO-1323.

<sup>15</sup> Orders MO-1196, PO-1679, MO-1755 and PO-2679.

[57] In the circumstances of this appeal, I find that the absurd result principle does not apply to the remaining withheld information which contains the affected parties' personal information intertwined with that of the appellant's son. Although the appellant may well be aware of some of the information remaining at issue, this is a case where disclosure is not consistent with the purpose of the exemption, which is to protect the privacy of individuals other than the appellant. Given my finding that there is particular sensitivity inherent in these records, and that disclosure would not be consistent with the purpose of the exemption, the absurd result principle therefore does not apply.

*Section 14(4)(c) (compassionate grounds)*

[58] I will now consider the application of the exception in section 14(4)(c) to the information that I have found to be subject to section 14(1) and 38(b), as the case may be. As the section 14(4)(c) exception can only apply to the personal information of a deceased individual, I will not be considering its application to the personal information that relates solely to other identifiable individuals. However, it may apply where the personal information about the appellant's son is also the personal information of an affected party.

[59] With regard to section 14(4)(c), the police acknowledge that the appellant is requesting the records for compassionate reasons. The police submit, however, that section 14(4)(c) cannot be applied to the entire record as it can only apply to the personal information of the appellant's son. The police submit that disclosure of personal information of an affected party is presumed to be an unjustified invasion of personal privacy under section 38(b).

[60] The appellant submits that section 14(4)(c) applies to the withheld information. The appellant submits that the records relate to his son, that he is a "close relative," and that disclosure is desirable for compassionate reasons in the circumstances. The appellant originally submitted that he takes no issue with the addresses and telephone numbers of affected parties being withheld "so long as their names are clearly identified so as to determine who said what and when." However, in his sur-reply, the appellant proposed that the names and addresses of affected parties be redacted and that the voice in the audio recordings be distorted and the image of affected parties in the video recording be blurred with their voice distorted.

[61] The appellant submits that the release of the withheld information for compassionate reasons is justified, as it will provide the appellant with a more comprehensive understanding of what happened to his son. It is submitted that this will help with the grieving process as it is the lack of knowledge of what has taken place that has caused the appellant the most suffering. The appellant submits that the revised Coroner's report indicates that the death was "undetermined" and his son either died by way of suicide or accident. The appellant submits that having the complete picture of his son's final hours and days will assist the appellant in coming to terms with his death and assist in determining the manner of death, which he asserts is not

suicide. In addition, the appellant submits that he seeks additional disclosure in order to conduct a private investigation into his son's death, "to ultimately determine the manner of death."

[62] 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>16</sup>

[63] Personal information about a deceased individual can include information that also qualifies as that of another individual. Where this is the case, the "circumstances" to be considered would include the fact that the personal information of the deceased is also the personal information of another individual 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).<sup>17</sup>

[64] After the death of an individual, it is that person's spouse or close relatives who are best able to act in their "best interests" with regard to whether or not particular kinds of personal information would assist them in the grieving process. The task of the institution is to determine whether, "in the circumstances, disclosure is desirable for compassionate reasons."<sup>18</sup>

#### Step 1 - Personal Information of the Deceased

[65] I find that some of the information that remains at issue is the personal information of the appellant's son that is inextricably intertwined with the personal information of identifiable individuals other than the appellant. I find that this requirement for the application of section 14(4)(c) is satisfied for the information where the appellant's son's personal information appears. However, also within the records are instances where the affected parties' personal information is not intertwined with that of the appellant's son. This personal information of the affected parties is not the personal information of the appellant's son and therefore section 14(4)(c) cannot apply to this information.

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<sup>16</sup> Orders MO-2237 and MO-2245.

<sup>17</sup> Order MO-2237.

<sup>18</sup> Order MO-2245.



### Step 2 - Spouse or "Close Relative"

[66] "Close Relative" is defined in section 2(1) of the *Act*:

"close relative" means a parent, child, grandparent, grandchild, brother, sister, uncle, aunt, nephew or niece, whether related by blood or adoption;

[67] As were the police, I am satisfied that the appellant is the father of the deceased individual whose personal information is contained in the records at issue, and therefore is a "close relative." I find that this requirement for the application of section 14(4)(c) is satisfied.

### Step 3 - Desirable for Compassionate Reasons

[68] With respect to the application of section 14(4)(c) of the *Act*, the police submit that they have severed and released most of the appellant's son's personal information in the records to the appellant, but withheld the personal information of affected parties and the personal information of his son where it is inextricably intertwined with that of the affected parties. They take the position that they have acted in accordance with the principle of compassionate disclosure prescribed by section 14(4)(c).

[69] The appellant submits that he is interested in disclosure of the withheld information for the purposes of scrutinizing the conduct of the police investigation and to challenge the conclusion that his son's death was a suicide.

[70] In Order MO-2245, Commissioner Beamish ordered the disclosure of highly sensitive personal information about the circumstances surrounding the death of an individual to a close relative. In doing so, the Commissioner stated the following:

By means of section 14(4)(c), the Legislature has recognized a group of individuals who have a special interest in gaining access to the personal information of a deceased individual. The intent of the section is to allow for the disclosure of information to family members even though that information would not have been disclosable to them during the life of the individual. In my view, it is a tacit recognition by the Legislature that, after the death of an individual, it is that person's spouse or close relatives who are best able to act in their "best interests" with regard to whether or not particular kinds of personal information would assist them in the grieving process. The task of the institution, and this office on appeal, is to determine whether, "in the circumstances, disclosure is desirable for compassionate reasons." This does not place the institution "*in loco parentis*" in the manner suggested by the Police when the disclosure is to adult relatives. Again, on the question of what is "compassionate", I accept the evidence and representations of the appellant.

[71] I adopt this approach in this appeal. In my review of the withheld information in the records, there appears the personal information of affected parties that is not intertwined with that of the appellant's son's personal information. In addition there is information which contains the affected parties' personal information which is intertwined with that of the appellant's son's personal information. Further, in my review of the records, it is apparent that the police have released all of the personal information of the appellant as well as most of the personal information of his son where it is not intertwined with that of an affected party. However, I found parts of the withheld information that is clearly the personal information of the appellant's son without any of the affected parties' personal information and this information will be ordered disclosed to the appellant on compassionate grounds.

[72] The remaining withheld information to be assessed contains the personal information of affected parties and at some parts contains this information which is also intertwined with the personal information of the appellant's son.

[73] I accept that the appellant requires the information about the events surrounding his son's death for closure and I give this significant weight. However, based on my review of the information that remains at issue and the parties' representations, I find that section 14(4)(c) does not apply in the circumstances of this appeal to most of the withheld information. The police disclosed a great deal of information to the appellant which is to be supplemented by the information that I have ordered to be disclosed. The information that remains at issue is not the personal information of the appellant's son alone, but also qualifies as the personal information of other identifiable individuals. The personal information of the appellant's son is inextricably intertwined with that of the other identifiable individuals. In my view, except for part of a record (Record 56, to be discussed below), the information already provided to the appellant as supplemented by the information that I have ordered disclosed, provides him with an understanding of the events leading up to and surrounding the death of his son and of the investigation that ensued. In light of these circumstances, and the highly sensitive nature of the personal information of the affected parties that remains at issue, I find that it has not been established that the disclosure of the specific information remaining at issue is desirable for compassionate reasons as contemplated by the third part of the section 14(4)(c) test.

[74] That being said, I will address the recorded 911 calls, the audio interviews, the video interviews and Record 56 specifically. The appellant suggests that any privacy concerns are addressed by distorting the voice in the audio and video recordings and also blurring the face in the video recordings. In my view, this is not sufficient to address the privacy concerns in releasing this information, except for one 911 call. After my review of the information that was released to the appellant, in addition to the information that I will order the police to release, it is clear that most of the information in the video and audio statements is already contained in the various occurrence reports and police notes already provided, except for information that would identify affected parties. In my view, distorting the voice and/or blurring the face will not be

sufficient or an appropriate way to deal with the privacy concerns of the affected parties. There are two video statements, and since the appellant is well aware of much of the information, it is likely that he would be able to identify the affected parties even if their faces and voices were distorted. In my view, given the highly sensitive nature of the affected parties' personal information, their privacy interests, in the circumstances of this appeal, outweigh any compassionate reasons for disclosing the information.

[75] However, with regard to one 911 recorded call, I find that on compassionate grounds it should be released to the appellant after distortion of the voice and redacting the name and address of the caller from the record. I make this finding because this affected party would have been unknown to the appellant before the incident and distorting his voice and redacting his name and address will sufficiently address any privacy concerns relating to the affected party in releasing this information.

[76] Record 56 consists of notes from an officer's notebook, and the information at pages 318 to 320 includes a summary of two affected parties' statements taken by that officer. Some of the information on these pages solely relates to an affected party, is not about the appellant's son, and disclosure would be an unjustified invasion of that individual's personal privacy. However, other portions of the information on these pages include the personal information of the appellant's son alone as well as the personal information of the appellant's son mixed with the personal information of affected parties. For the following reasons, I find that this information, including some of the personal information of affected parties where it is mixed with that of the appellant's son, should be released to the appellant under compassionate grounds.

[77] Much of the personal information qualifies as both the personal information of the appellant's son and affected parties. With respect to this information only, any order that I make that requires the disclosure of the appellant's son's personal information will result in the disclosure of the personal information of the affected parties. In this situation, the relevant circumstances that must be considered are the nature of the request, and the privacy interests of the affected parties.

[78] In assessing the relevant circumstances, including the appellant's need to receive this information to gain a better understanding of the circumstances of his son's death, I give significant weight to the fact that much of his son's personal information in this record includes the affected parties' observations about the deceased's health and circumstances prior to his death. In my view, this is the appellant's son's sensitive personal information. However, in circumstances where the deceased is determined to have died of undetermined causes and grieving relatives seek access to information about the circumstances of the death, I also attribute significant weight to the appellant's need for this information as part of his grieving process. I have also considered the appellant's perception that the information that has been disclosed to him to date has not provided him with clarity regarding the circumstances of death as a relevant circumstance favouring disclosure. I give significant weight to the fact that the appellant is seeking information for the purposes of arriving at an accurate picture of

the cause of death of his son.

[79] I must also now consider the additional circumstances of the affected party's privacy rights since disclosure of the deceased individual's information in this portion of Record 56 will result in the disclosure of some of the affected party's personal information.

[80] I accept the evidence of the appellant regarding his need to know all of the circumstances surrounding his son's death, and to resolve what he believes is a lack of clarity in the information that has been provided to him to date about the circumstances of his son's death. Having reviewed record 56, pages 318 to 320, I am satisfied that it contains the type of information regarding the events surrounding the death that would assist the appellant in better understanding his son's death.

[81] Having carefully considered all the circumstances surrounding this request and appeal, including the interests of the appellant, his son and the affected parties, I find that disclosure to the appellant of the appellant's son's personal information in record 56, pages 318 to 320 is "in the circumstances, desirable for compassionate reasons." I have concluded that in the circumstances of this case, and in relation to the information in the record that qualifies as the appellant's son's personal information, the affected party's privacy interests must yield to the compassionate reasons for disclosure articulated by the appellant. However, as noted, wherever possible, I will be ordering the severance of personal information relating only to the affected parties, which will limit the disclosure of their sensitive personal information.

[82] Further, with the disclosure of these pages of Record 56, combined with what the police have already disclosed and what I will be ordering them to disclose, the appellant will possess a summary of the statements made in the video and audio which I found should not be disclosed for privacy reasons.

[83] Therefore, I find that section 14(4)(c) applies to the information at issue in portions of Record 56, pages 318 to 320 and the disclosure of the information at issue does not constitute an unjustified invasion of privacy. As a result, the exemption in section 14(1) does not apply to this record.<sup>19</sup> Accordingly, I will order portions of Record 56, pages 318 to 320 to be disclosed to the appellant.

[84] As the third part of the test was not established for the remaining information, I find that the exception permitting the disclosure of personal information in compassionate circumstances at section 14(4)(c) does not apply in the circumstances of this appeal.

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<sup>19</sup> Since the appellant's personal information does not appear in this record, section 38(b) does not apply.

Final conclusion

[85] I conclude that disclosure of the information that remains at issue, with the exception of 1) information that is the appellant's son's information alone, and is not intertwined with that of an affected party; and 2) one 911 audio recording; and, 3) part of Record 56 pages 318 to 320, would amount to an unjustified invasion of the personal privacy of individuals other than the appellant. Therefore, I find that the exemption at section 14(1) or 38(b), as the case may be, applies to the information.

**Issue C: Does the discretionary exemption at section 8(1)(c) apply to the information at issue?**

[86] The police relied on the discretionary exemption at 38(a) in conjunction with 8(1)(e) and (l) to deny access to the withheld information including police codes. As I have found that the exemptions at section 14(1) and 38(b) apply to the personal information of affected parties, I will not also examine if the section 38(a) discretionary exemption also applies to this information. With regard to police codes, the appellant has indicated that he is not seeking specialized police codes and therefore these are not a consideration in this appeal. However, in their representations, the police refer to using their discretion under section 8(1)(c) to deny access to Record 34 and provide confidential submissions with regard to this record which they submit disclosure of would reveal an investigative technique.

[87] Although the police did not initially address section 8(1)(c) in their access decision, they did address this section in their representations which were shared with the appellant. The appellant did not object to the police's late raising of this issue and provided his own representations on section 8(1).

[88] Section 8(1)(c) states:

A head may refuse to disclose a record if the disclosure could reasonably be expected to,

(c) reveal investigative techniques and procedures currently in use or likely to be used in law enforcement;

[89] The term "law enforcement" is used in several parts of section 8, and is defined in section 2(1) of the *Act*. The term "law enforcement" has been found to apply to an investigation into a possible violation of the *Criminal Code*.<sup>20</sup> Accordingly, for reasons already stated, I am satisfied that the records at issue in this appeal were created in relation to a law enforcement matter.

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<sup>20</sup> Orders M-202 and PO-2085.

[90] Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context.<sup>21</sup> However, it is not enough for an institution to take the position that the harms under section 8 are self-evident from the record or that the exemption applies simply because of the existence of a continuing law enforcement matter.<sup>22</sup> The institution must provide detailed evidence about the potential for harm. It must demonstrate a risk of harm that is well beyond the merely possible or speculative, although it need not prove that disclosure will in fact result in such harm. How much and what kind of evidence is needed will depend on the type of issue and seriousness of the consequences.<sup>23</sup>

[91] To meet the “investigative technique or procedure” test, the police were required to show that disclosure of the technique or procedure to the public (as represented by the appellant) could reasonably be expected to hinder or compromise its effective utilization. Typically, the exemption will not apply where the technique or procedure is generally known to the public.<sup>24</sup> The techniques or procedures must be “investigative”. The exemption will not apply to “enforcement” techniques or procedures.<sup>25</sup>

### ***Analysis and finding***

[92] I have reviewed Record 34 for which the police are claiming section 8(1)(c) to exempt the record in its entirety. In my review, I note that the appellant’s personal information does not appear in this record, however, the personal information of an affected party appears in this record. Since I have already found that disclosing the personal information of an affected party will result in an unjustified invasion of privacy, I will address the remainder of the record that does not include the affected party’s personal information.

[93] Establishing one of the exemptions in section 8 of the *Act* requires that the expectation of one of the enumerated harms coming to pass, should a record be disclosed, not be fanciful, imaginary or contrived, but rather one that is based on reason.<sup>26</sup> This requirement that the expectation of harm must be based on reason means that there must be some logical connection between disclosure and the potential harm which the police seek to avoid by applying the exemption.<sup>27</sup> The Supreme Court of Canada affirmed in *Ontario (Community Safety and Correctional Services) v. Ontario*

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<sup>21</sup> *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).

<sup>22</sup> Order PO-2040 and *Ontario (Attorney General) v. Fineberg*, cited above.

<sup>23</sup> *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4.

<sup>24</sup> Orders P-170, P-1487, MO-2347-I and PO-2751.

<sup>25</sup> Orders PO-2034 and P-1340.

<sup>26</sup> Order 188. See also Order PO-2099.

<sup>27</sup> Orders 188 and P-948.

*(Information and Privacy Commissioner)*, cited above, that the evidence must demonstrate a risk of harm that is well beyond the merely possible or speculative although it need not prove that disclosure will in fact result in such harm.

[94] Considering this standard, I am satisfied that the police have demonstrated that disclosure of the information could reasonably be expected to result in the harm under section 8(1)(c). After reviewing the record, along with the police's representations, I agree that it contains an investigative technique that is currently in use and likely to be used in future law enforcement. On my review of this record, I am not satisfied that the investigative technique employed by the police is generally known to the public. In the circumstances of this appeal, and after reviewing the record, the police have persuaded me that there is a risk of harm that is "well beyond the merely possible or speculative" to current law enforcement techniques with disclosure of this particular information. As a result, I find that section 8(1)(c) applies to the remaining withheld information in Record 34.

**Issue D: Did the institution exercise its discretion under sections 38(b) and 8(1)(c)? If so, should this office uphold the exercise of discretion?**

[95] The section 38(b) and 8(1)(c) exemptions are discretionary, and permit an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so. As noted, since the appellant's personal information only appears in some of the records (17 in total), I will only discuss if the police properly exercised their discretion with regard to these 17 records as well as the entirety of Record 34 which was withheld under section 8(1)(a).

[96] In addition, the Commissioner may find that the institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose;
- it takes into account irrelevant considerations;
- it fails to take into account relevant considerations.

[97] In either case, this office may send the matter back to the institution for an exercise of discretion based on proper considerations.<sup>28</sup> This office may not, however, substitute its own discretion for that of the institution.<sup>29</sup>

[98] In their representations, the police submit that they exercised their discretion

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<sup>28</sup> Order MO-1573

<sup>29</sup> Section 54(2).

under 38(b), taking into account the following relevant considerations:

- The appellant has a right of access to his own personal information
- The exemptions from the right of access were limited and specific
- The appellant has a sympathetic and compelling need to receive the information as the records are in regard to the death of his son and requested for compassionate reasons
- The relationship between the appellant and any affected parties
- The nature of the information and the extent to which it is significant and/or sensitive to the institution, the appellant or any affected party.

[99] The police submit that they have met their obligation to the appellant under the *Act* while following established policies and procedures. The police submit that they complied with the appellant's request as a considerable amount of his son's personal information was released to him.

[100] With regard to Record 34 that was withheld under the exemption at section 8(1)(c), the police made confidential representations regarding their decision.

[101] The appellant submits that the police did not exercise their discretion appropriately as too much of the discretionary decision is based on alleged criminal behaviour of the appellant, with no documentary proof that it ever happened. The appellant submits that even if the alleged criminal harassment were true, the information being sought would make no difference as he already knows the identity of every person in this case.

[102] The appellant submits that the alleged criminal harassment ought to be discounted in its entirety. The appellant submits that, if anything, it is unfortunate that his relationship with the police remains so acrimonious. He submits that he is grieving the loss of his son and that the manner of death remains unclear, which contributes to his grief.<sup>30</sup>

### ***Finding***

[103] I am satisfied that the police exercised their discretion appropriately in the circumstances of this appeal. The police properly considered the appellant's right to information for compassionate reasons, releasing a significant amount of information to

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<sup>30</sup> The Coroner changed his report to show the cause of death was "undetermined" when it was originally shown to be "suicide".



him while balancing the affected parties' right to privacy. Overall, I find that the police took into consideration only relevant factors to withhold the information and I have upheld their decision with regard to all of the personal information of the appellant's son where it is intertwined with that of the affected parties. In exercising their discretion under section 8(1)(c), the police considered the wording of the exemption and the interests it seeks to protect. I do not agree with the appellant's submission that the police took into consideration an irrelevant factor by considering the alleged criminal harassment as a factor. For reasons already articulated, the police have indicated that more than one affected party contacted them about the appellant harassing them. While I make no finding specifically on whether or not criminal harassment occurred, I accept that this was a valid consideration for the police when considering releasing the personal information of these affected parties. I uphold the police's exercise of discretion.

**ORDER:**

1. I uphold the police's decision to withhold information under section 8(1)(c), 38(b) and 14(1), in part.
2. I order the police to provide the appellant with a copy of the pages as set out in the highlighted copies of those pages provided with the police's copy of the order, and I order them to do so by **August 7, 2019** but not before **August 2, 2019**. To be clear, the highlighted portions of the records should be disclosed.
3. I order the police to provide the appellant with a copy of the 911 (file no. 16-216413) call with the voice distorted and the name and address of the affected party redacted from the record.<sup>31</sup>
4. In order to verify compliance with order provisions 2 and 3, I reserve the right to require the police to provide me with a copy of the records disclosed to the appellant.

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

Alec Fadel  
Adjudicator

June 28, 2019 \_\_\_\_\_

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<sup>31</sup> The police may consider the fee provisions set out in the *Act* and *Regulation 823* and issue a fee estimate in accordance with those provisions prior to disclosing this record, if appropriate.