

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-3803

Appeal MA18-566

Toronto Police Services Board

July 12, 2019

**Summary:** A requester sought access under the *Act* to photographs of her deceased adult son from the Toronto Police Services Board. The police issued a decision granting partial access to the records, but they declined to provide the appellant with copies of the records. Instead, the police asked the requester to attend police headquarters in order to view the records. The requester appealed the police's decision to this office. The adjudicator finds that the method of access offered by the police is inconsistent with section 23 of the *Act*, and she orders them to provide the appellant with copies of the records with the information about another individual redacted.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, RSO 1990, c M56, sections 23(1) and 23(2); Regulation 823 section 2(1).

**Orders Considered:** Order MO-2245.

### OVERVIEW:

[1] The Toronto Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) from the mother of a deceased individual for the following:

I would like to receive more photos that weren't sent that would be of [the name of the requester's deceased adult son]. I am aware of the graphic content.

[2] The police issued a decision granting access to the records in full, citing the

section 14(4)(c) compassionate grounds exception to the personal privacy exemption at section 14(1) of the *Act*. The decision stated the following:

Pursuant to our decision letter to you dated May 28, 2018, where we had advised that due to the graphic and sensitive content certain photographs were withheld from the records provided to you. Full access to view these photographs in person can be arranged through your Analyst, however a hard copy will not be released. Any accommodations you require will be made when necessary to have you attend Toronto Police Service Headquarters to view the photographs identified in your request.

[3] The requester appealed the police's decision to this office. In doing so, she indicated that she was not able to attend the police department to view the photos as she lives far away from the city.

[4] During the mediation stage of the appeal process, the police issued a revised decision letter rescinding the full access granted in their original decision. In the revised decision, the police state that they are now granting partial access to the records, withholding information relating to a second deceased individual who appears in the photographs pursuant to the personal privacy exemption under the *Act*. The police continued to maintain that, "due to the graphic and sensitive nature of these records, copies will not be forwarded to you. Should you require further clarification or wish to attend Toronto Police Service Headquarters to view these records, please contact [the] Analyst." The police indicated that they were prepared to grant access to the records at their headquarters, where the appellant could obtain victim services counselling, if desired.

[5] The mediator reviewed the revised decision with the appellant. The appellant did not object to the exemption claimed to deny access to the personal information of the second individual that is not her son. As a result, the application of the personal privacy exemption at section 14(1) of the *Act* to the information of the second individual is not at issue in this appeal.

[6] The appellant articulated her concern with the way in which access was being granted. She advised the mediator that she would like hard copies of the photographs to assist in her healing process. The appellant stated that she is aware that the records are graphic and sensitive in nature, but she maintains that disclosure as requested is desirable for compassionate reasons. The appellant advised that she does not anticipate requiring victim services counselling. Accordingly, the method in which the police have decided to grant access to the records is at issue in this appeal.

[7] A mediated resolution was not possible and the file was transferred to the adjudication stage for an inquiry. In conducting an inquiry under the *Act*, I invited and received written representations from both parties on whether the method of disclosure offered by the police is consistent with the *Act*. For the reasons that follow, I find that the police's access decision is not consistent with section 23 of the *Act*, and I order

them to disclose the records to the appellant by mailing her redacted copies.

## **RECORDS:**

[8] The records at issue are portions of photographs containing images of the appellant's son.

## **DISCUSSION:**

### **Is the method by which the police have chosen to provide access consistent with the *Act*?**

[9] The police have decided to grant partial access to the records at issue based on the compassionate grounds exception to the mandatory personal privacy exemption at sections 14(4)(c) and 14(1), respectively. The appellant would like to receive hardcopies of the records, but the police are insisting that she must examine the records at the police headquarters in Toronto. Accordingly, the issue in this appeal is the manner in which access to the records will be effected.

[10] Part I of the *Act* deals with access to general records, including requests for another individual's personal information. Sections 19 and 23 are found in Part I, and outline an institution's obligations when providing access to general records. If an institution decides that access to a record should be granted, section 19 of the *Act* requires the institution to give the requester access to the record. Section 23 dictates how access is to be provided. Section 23(1) states:

Subject to subsection (2), a person who is given access to a record or a part of a record under this *Act* shall be given a copy of the record or part unless it would not be reasonably practicable to reproduce it by reason of its length or nature, in which case the person shall be given an opportunity to examine the record or part.

[11] This is a mandatory provision requiring an institution to provide the requester with a copy of the record, or part thereof, subject only to the requirement of reasonable practicability.<sup>1</sup> If it is not reasonably practicable to reproduce the record, section 23(1) requires the institution to allow the person an opportunity to examine the record. The manner in which a requester is to examine a record is addressed in sections 23(2) and 23(3) of the *Act*:

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<sup>1</sup> Order PO-1679, with reference to the provincial equivalent at section 30(1) of the *Freedom of Information and Protection of Privacy Act*.

(2) If a person requests the opportunity to examine a record or part and it is reasonably practicable to give the person that opportunity, the head shall allow the person to examine the record or part.

(3) A person who examines a record or a part and wishes to have portions of it copied shall be given a copy of those portions unless it would not be reasonably practicable to reproduce them by reason of their length or nature.

[12] Section 23(2) of the *Act* must be read in conjunction with section 2 of Regulation 823 enacted pursuant to the *Act*, which states:

(1) A head who provides access to an original record must ensure the security of the record.

(2) A head may require that a person who is granted access to an original record examine it at premises operated by the institution.

(3) A head shall verify the identity of a person seeking access to his or her own personal information before giving the person access to it.

### ***Representations***

[13] The police maintain that their decision to allow the appellant to examine the records, rather than providing her with copies, complies with the *Act* and is a "more appropriate application of the *Act* in terms of compassion."

[14] With respect to the language of section 23(1) of the *Act*, set out above, the police maintain that it would not be reasonable to reproduce the records by reason of their nature. In support of this position, the police submit that the records consist of photographs that are graphic and highly sensitive in nature. The police argue that providing the appellant with copies would not be compassionate, but rather would "protract the appellant's grieving process."

[15] The police submit that their insistence on providing access through examination was "a heavily weighed decision" that was not intended to be a barrier to access. Rather, the decision was made with the intention of assisting the appellant after a tragic loss. The police argue that the appellant's healing process will be hindered if she receives copies of the records, as they would serve as a "constant reminder of her son's death."

[16] In support of their position that providing copies of the records would undermine the spirit and intent of the compassionate grounds provision in section 14(4)(c), the police state:

In the processing of the request, during mediation and now adjudication, all who have come to view these photographs, with no personal

connection to the deceased, have all been effected [sic], with these images now imprinted. It is clear that any individual with a personal connection to the deceased, especially that of a parent, would be negatively impacted by these pictures.

[17] Relying on section 23(2) of the *Act*, the police maintain that their decision to invite the appellant to their headquarters to view the records was reasonable, as they will be able to provide "a safe and supportive environment to access the [...] materials; and ensure that Victim Services counselling is immediately available to assist the appellant in working through her grieving process." In response to the appellant's concerns about the distance required to travel to attend the police headquarters, the police note that they offered the use of video calling as an option for providing access.

[18] The police also maintain that inviting the appellant to examine the records is consistent with their obligation under section 2(1) of Regulation 823 to ensure the security of the records. The police submit that providing copies to the appellant could hinder the security of the records and create a situation where the privacy of both deceased individuals could be breached. By providing access in person or by video calling, the police say they would be able to conceal the identity of the second individual and maintain full security of the records.

[19] The appellant disagrees with the police's assumption that having access to the records will hinder her healing process. In contrast, she explains that not having access to the records is "much more difficult" than having them in her possession. The appellant explains that she has already read police notes describing the manner in which her son was found. She also says that seeing her son in the condition that he was in at the funeral home prior to his cremation is "far worse than [the condition] he would have been [in] when he was found."

[20] The appellant acknowledges that the records contain images of a second individual. She does not object to the images being blurred or otherwise cropped so that she does not obtain access to that individual's personal information.

[21] In support of her position, the appellant refers me to past orders of this office, including Order MO-2245, in which another mother was granted access to photographs of her deceased son. The appellant acknowledges that every case is reviewed on its facts, but she asks that the I order the police to "honour [her] wishes" and provide her with the photographs of her son to allow her to "move on."

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

[22] The police have decided to granted partial access to the records responsive to the appellant's request. At issue in this appeal is whether the proposed method of access aligns with the *Act*. For the reasons that follow, I find that requiring the appellant to attend the police headquarters or view the records by video call is inconsistent with section 23 of the *Act*.

[23] Relevant to my finding is the language of sections 23(1) and 23(2), in particular. Section 23(1) provides that, subject to section 23(2), a person who is granted access to a record "**shall be given a copy** of the record or part unless it would not be reasonably practicable to reproduce it by reason of its length or nature" (emphasis added). Section 23(2) states that "**if a person requests** the opportunity to examine a record or part," and it is reasonably practicable to do so, then the head shall allow the person to examine the record (emphasis added).

[24] Section 23 dictates that once an institution decides to provide access to a record, it is obligated to provide a requester with a copy of the record or part of a record subject only to two exceptions: (1) where it is not reasonably practicable to produce a copy by reason of the length or nature of the record, or (2) where the requester asks to examine the original record. In other words, an institution does not have an unfettered right to decide which method of access it chooses to employ.<sup>2</sup>

[25] In the case before me, the appellant has been unequivocal in her request to obtain copies of the responsive records that the police have decided to disclose to her based on the compassionate grounds exception to the mandatory personal privacy exemption. The appellant has not requested to examine the original records, as contemplated by section 23(2). Therefore, it is incumbent on the police to provide access to copies of the records under section 23(1), unless it would not be reasonably practicable to do so.

[26] In requiring the appellant to examine the records, the police bear the onus of establishing that it would not be reasonably practicable to provide the appellant with her preferred method of access.<sup>3</sup> Some examples of why it might not be reasonably practicable to provide copies of the records are:

- if the records are very large;
- if reproduction the records would be unduly burdensome; or
- if only part of the records are subject to disclosure and it is not feasible to allow inspection without disclosing the protected parts of the records as well.<sup>4</sup>

[27] Although the appellant has not expressed any reluctance to receiving records containing graphic images of her son, the police maintain that it is not reasonably practicable to reproduce the records by reason of their "graphic and highly sensitive" nature. According to the police, a number of negative consequences may result from providing the appellant with copies of the records, such as prolonging the appellant's

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<sup>2</sup> Order P-233.

<sup>3</sup> Order P-233.

<sup>4</sup> Order PO-3851.

grieving process, and obstructing the police's ability to ensure the security of the records in accordance with section 2(1) of Regulation 823. The police maintain that their proposed method of access is consistent with the compassionate objectives of the *Act*, as the appellant will have the benefit of victim services counselling if she views the records at their headquarters or over a video call.

[28] In my view, the police's submissions fail to establish that it is not reasonably practicable to provide redacted copies of the responsive records to the appellant, as required by section 23(1) of the *Act*. Rather than explaining how the length or nature of the records make it impracticable to provide redacted copies, the police explain their decision by saying they considered what they believe to be best for the appellant's emotional well-being. The police's position focuses on the alleged harms that could befall the appellant if she views the records in the privacy of her own home, without the benefit of the police's victim services counselling. In other words, they justify their decision by making assumptions about how the appellant will react to the records and the preferred method for addressing that reaction.

[29] The police's position is also directly at odds with their decision to disclose the records for compassionate reasons under section 14(4)(c) of the *Act*, which, as noted by Commissioner Brian Beamish in Order MO-2245, "was designed to allow families to have the records they feel they require in order to grieve in the way they choose."

[30] I note that the responsive records consist of less than 30 photographs depicting the appellant's son and another individual. Based on my review of the records, I am satisfied that the quantity and nature of the records lend themselves to being copied and redacted for the purpose of providing access, and that it is reasonably practicable to do so.

[31] For these reasons, I find that the appellant has been clear in her desire to obtain copies of the records, and that it is reasonably practicable for the police to comply with this request. As the police have not established either of the two grounds upon which they may decide to provide access by means of examination, the police are required to provide copies of the responsive records in accordance with section 23(1).

[32] Regarding the police's concerns about ensuring the security of the records, I note that the obligation set out in section 2(1) of Regulation 823 is only relevant where an institution is providing access to an original record under section 23(2) of the *Act*. The same obligation does not apply where an institution is disclosing copies of records under section 23(1). Once copies of records are disclosed to a requester, an institution is not able to place limits on how the disclosed records are used or shared by a requester.

**ORDER:**

1. I order the police to send redacted copies of the responsive records to the appellant by **August 12, 2019**.

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

Jaime Cardy  
Adjudicator

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July 12, 2019