

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-3961**

Appeal MA19-00320

Durham Regional Police Services Board

October 2, 2020

**Summary:** This appeal deals with an access request made under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the Durham Regional Police Services Board. The request was for the audio recording of a 911 call relating to a tragic incident involving the appellant's brother. In this order, the adjudicator finds that the recording contains the personal information of the appellant's brother and the 911 caller. While the call was made anonymously, the adjudicator finds that it would be possible to identify the caller from their voice. However, the adjudicator also finds that by distorting the voice of the 911 caller, that individual would not be identifiable and the information in the recording would not qualify as the caller's personal information. With respect to the other personal information in the recording, the adjudicator finds that the compassionate grounds in section 14(4)(c) apply in the particular circumstances of this appeal. The police are ordered to disclose the audio recording, in part, to the appellant and to distort the voice of the 911 caller.

**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), 14(1), 14(2)(f), 14(2)(i), 14(3)(b) and 14(4)(c).

**Orders Considered:** MO-2245 and MO-3796.

### **OVERVIEW:**

[1] This order disposes of the issues raised as a result of an appeal of an access request made to the Durham Regional Police Services Board (the police), under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The request

was for a copy of an audio recording of a 911 call and incident report relating to the requester's brother's tragic and sudden death.

[2] The police granted access, in part, to a General Occurrence Report and a Call Hardcopy, which is a transcript of a 911 call. The police denied access to some of the information in these records, as well as a 911 audio recording in its entirety, claiming the application of the discretionary exemption in section 38(b), (personal privacy) in conjunction with section 14(3)(b) of the *Act*.

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

[4] During the mediation of the appeal, the appellant advised the mediator that the Occurrence Report and the transcript of the 911 call, to which he had been granted partial access, were not at issue. However, the appellant wished to pursue access to the audio recording of the 911 call, and believed it should be disclosed to him on compassionate grounds. He further advised the mediator that he was not seeking the caller's name or phone number or any other information that would identify the caller.

[5] The police advised the mediator that they had considered whether there was a basis to disclose the information to the appellant on compassionate grounds, and they remained of the view that the disclosure of the 911 audio recording would be an unjustified invasion of personal privacy of the caller.

[6] The appeal then moved to the adjudication stage of the appeals process, where an adjudicator may conduct an inquiry. The adjudicator assigned to the appeal sought, and received, representations from the police. The appeal was then transferred to me to continue the inquiry. I sought, and received, representations from the appellant. Representations were shared between the parties in accordance with this office's *Practice Direction 7*. I sought reply representations from the police, but they did not provide reply representations. Staff of this office attempted, on more than one occasion, to contact the 911 caller, but those attempts were unsuccessful.

[7] I note that, upon my review of the parties' representations and of the record itself, I have concluded that the question of whether the record is exempt from disclosure under the *Act* should be more properly considered under section 14(1) (personal privacy), rather than section 38(b).

[8] For the reasons that follow, I find that the unaltered audio recording of the 911 call contains the personal information of two individuals. However, I also find that if the voice of the 911 caller is distorted on the audio recording, it no longer qualifies as the personal information of the caller, as that individual would not be identifiable. I also find that the audio recording is not exempt from disclosure under section 14(1). I order the police to disclose the audio recording of the 911 call to the appellant under the compassionate grounds in section 14(4)(c), subject to the conditions outlined in the order provisions.

## **RECORD:**

[9] The sole record at issue is a 911 audio recording. In this order, when I use the term "record," I am referring to the audio recording of the 911 call.

## **ISSUES:**

- A. Does the record 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) apply to the information at issue?

## **DISCUSSION:**

### **Issue A: Does the record contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?**

[10] 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) as follows:

"personal information" means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except if they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,

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

(h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

[11] 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>

[12] 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>

[13] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.<sup>3</sup>

### ***Representations***

[14] The police submit that the record is an audio recorded 911 call regarding the sudden death by drug overdose of the appellant's brother. The police argue that the 911 call contains recorded information about identifiable individuals, meeting the definition of "personal information" in section 2(1) of the *Act*. In particular, the police submit that the recording contains personal information about the appellant's brother, because the incident giving rise to the 911 call reveals information of a personal nature about him, that is, a drug overdose and medical emergency.

[15] In addition, the police submit that the recording contains the 911 caller's telephone number, as well as their voice and actions during the 911 call. Further, the police argue that the voice of the 911 caller would most likely identify the caller to the appellant, as the appellant is aware of his deceased brother's friends and acquaintances. In that regard, the police submit that the appellant advised one of the police officers that he believed he may know who was with his brother during the incident. The police also submit that at the time of the access request, the appellant advised them that he did not want the 911 caller to be contacted, as the appellant believed that the 911 call was made anonymously.

[16] The appellant submits that the definition of "personal information" in section 2(1) of the *Act* does not include an individual's voice, but rather to the type of information such as an individual's address and telephone number, which he reiterated he does not seek. The appellant further submits that the police's position on voice recognition is

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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.

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

speculative, as it would be unreasonable to expect that the caller could be identified based solely on his/her voice.

[17] The appellant further submits that while he may be able to recognize the voice of the 911 caller because it was an acquaintance of his brother, he is not familiar with all of the friends or acquaintances that his brother had in his life. He further argues that one could not assume that he would be able to distinguish the voice of each friend or acquaintance, particularly in an emotionally charged situation, such as the making of a 911 call.

[18] The appellant acknowledges that he advised one of the investigating officers that he believed he may have known who his brother was with during the evening of his death. He states that this information was provided to the officer to assist with the investigation of the matter, should there be the potential of laying criminal charges, and should not be used against him in seeking to gain access to the 911 audio recording.

[19] Lastly, the appellant submits that he was aware that when he made the access request, it "required" him to indicate that he was not asking for the 911 caller's consent to disclose information, such as the name and telephone number, but that he was still seeking the actual recording, without a name or telephone number.

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

[20] I have carefully considered the representations of the parties, and I have listened to the recording of the 911 call that was made in this tragic situation. The audio recording is audible. I find that the record contains the personal information of the appellant's deceased brother, as well as that of the individual who made the 911 call.

[21] Concerning the appellant's brother, the record, as a whole, is about him. More particularly, in the record the appellant's brother is identified by his name, and it is evident from the call that he was in distress, qualifying as his personal information under paragraph (h) of the definition of "personal information" in section 2(1) of the *Act*.

[22] Regarding the individual who made the 911 call, I find that the record contains the telephone number of that individual. While the caller does not identify their name, I find that it would be possible to identify the caller, based on the telephone number contained in the record. However, I also note that the telephone number is not at issue in this appeal, as the appellant has advised that he is not seeking it.

[23] As set out in the introductory wording of the definition of "personal information" in section 2(1) of the *Act*, "personal information" means recorded information about an identifiable individual. Two questions remain then; namely whether the remaining information in the record is sufficient to allow one to identify the individual who made the 911 call through hearing their voice, and whether the substance of that information qualifies as "personal information" under section 2(1) of the *Act*. In the particular circumstances of this appeal, that is, given that the appellant has acknowledged that he has some degree of familiarity with his brother's friends and acquaintances, and that he concedes that he may be able to identify the 911 caller, I find that it is possible for the

appellant to identify who made the 911 call. I further find, then, that once identified, the information about the 911 caller qualifies as their personal information under paragraph (h) of the definition, because it reveals something of a personal nature about them.

[24] As previously stated, the appellant does not seek the telephone number referred to in the record. I have found that, in the specific circumstances of this appeal, it may be possible for the appellant to identify the 911 caller, based on their voice. As a result, I find that if the police were to distort the caller's voice, it would not be possible to identify them. A finding that information qualifies as "personal information" for the purposes of the definition in section 2(1) of the *Act*, requires that the individual in question be "identifiable." With the voice distorted, I find that the individual would not be identifiable and, therefore, the audio recording would not contain that individual's personal information. Accordingly, the personal privacy exemption cannot apply to the 911 caller's information, with the caller's voice distorted.

[25] I also note that the record contains an address and, while neither party identified in their representations whose address it belongs to, I find that it would be possible to identify some individual, based on this address, and that this address qualifies as that individual's personal information under paragraph (d) of the definition in section 2(1).

[26] Lastly, I find that the record does not contain the personal information of any other individuals, including the appellant. Because the record does not contain the appellant's personal information, the question of whether the record is exempt under the *Act* is more properly considered under the mandatory exemption in section 14(1) of the *Act*, rather than the discretionary exemption in section 38(b).

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

[27] The remaining personal information at issue is the appellant's brother's personal information, as well as an address. Where a requester seeks personal information of another individual, section 14(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 14(1) applies.

[28] The section 14(1)(a) to (e) exceptions are relatively straightforward. The section 14(1)(f) exception, allowing disclosure if it would not be an unjustified invasion of personal privacy, is more complex, and requires a consideration of additional parts of section 14. Sections 14(1) to (4) provide guidance in determining whether disclosure would be an unjustified invasion of personal privacy.

[29] If the information fits within any of paragraphs (a) to (e) of section 14(1), disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 14(1).

[30] Sections 14(2) and (3) also help in determining whether disclosure would or would not be an unjustified invasion of personal privacy under section 38(b). Also, section 14(4) lists situations that would not be an unjustified invasion of personal privacy.

[31] If any of paragraphs (a) to (h) of section 14(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 14(1).

[32] 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>4</sup> 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>5</sup>

[33] In previous orders, considerations which have also been found relevant in determining whether the disclosure would be an unjustified invasion of personal privacy include:

- inherent fairness issues;<sup>6</sup>
- ensuring public confidence in an institution;<sup>7</sup>
- personal information about a deceased person;<sup>8</sup> and
- benefit to unknown heirs.<sup>9</sup>

[34] The police are claiming the application of the presumption in section 14(3)(b) (law enforcement investigation) and the factors in sections 14(2)(f) (highly sensitive) and 14(2)(i) (unfair damage to reputation).

[35] If any of paragraphs (a) to (c) of section 14(4) apply, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 14(1). The appellant is claiming the application of the compassionate grounds for disclosure in section 14(4)(c), which states:

Despite subsection (3), a disclosure does not constitute an unjustified invasion of personal privacy if it,

(c) 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.

[36] The terms "close relative" and "spouse" are defined in section 2(1) of the *Act* as follows:

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<sup>4</sup> Order P-239.

<sup>5</sup> Order P-99.

<sup>6</sup> Orders M-82, PO-1731, PO-1750, PO-1767 and P-1014.

<sup>7</sup> Orders M-129, P-237, P-1014 and PO-2657.

<sup>8</sup> Orders M-50, PO-1717, PO-1923, PO-1936 and PO-2012-R.

<sup>9</sup> Orders P-1493, PO-1717 and PO-2012-R.

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

"spouse" means,

(a) a spouse as defined in section of the *Family Law Act*, or

(b) either of two persons who live together in a conjugal relationship outside marriage. ("conjoint")

[37] 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>10</sup>

[38] 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>11</sup>

[39] 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>12</sup>

### ***Representations***

[40] The police submit that disclosure of the record would constitute an unjustified invasion of the personal privacy of the individual who made the 911 call. The police rely on the presumption in section 14(3)(b) (investigation into a violation of law) and the factors in sections 14(1)(f) (highly sensitive) and (i) (unfair damage to reputation). In addition, the police argue that the compassionate grounds for disclosure in section 14(4)(c) do not apply in this case.

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<sup>10</sup> Orders MO-2237 and MO-2245.

<sup>11</sup> Order MO-2237.

<sup>12</sup> Order MO-2245.

[41] In particular, with respect to the presumption in section 14(3)(b), the police submit that they are a law enforcement agency maintained under the *Police Services Act* with the responsibility of investigating possible offences. The police argue that the information provided in the 911 call was done so in confidence, as it relates to alleged drug use by the appellant's brother and the 911 caller.

[42] Concerning the factors in section 14(2), the police submit that the personal information at issue is highly sensitive (section 14(2)(f)), the disclosure of which may unfairly damage the reputation of the 911 caller (section 14(2)(i)), given that the caller was allegedly involved in drug activity. In addition, the police submit that there is a slight chance that the appellant may retaliate against the 911 caller and possibly commit an offence under the *Criminal Code*.

[43] With respect to the possible application of section 14(4)(c), the police submit that the disclosure of solely the appellant's brother's personal information is desirable for compassionate reasons, and cite that as the reason they provided the appellant with a severed copy of the transcript of the 911 call, disclosing the appellant's brother's personal information.

[44] The appellant requests that the audio recording of the 911 call be disclosed to him on the basis of the compassionate grounds in section 14(4)(c), and submits that hearing the audio recording of the 911 call would be the "final piece" of information that he and his family need in having their questions answered about what occurred the evening that the appellant's brother passed away. While the appellant has a severed copy of the transcript of the 911 call, he argues that it does not provide him or his family with the closure that they need, in hearing the last moments of his brother's life, and that they are in the best position to determine what type of personal information would assist them in the grieving process.

[45] Concerning the police's statement that the appellant may retaliate against the 911 caller and possibly commit a criminal offence, the appellant argues that this claim is without merit. With respect to the application of the presumption in section 14(3)(b), the appellant concedes that a police detective was assigned to investigate the death of his brother.

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

[46] As previously stated, section 14(1) is a mandatory exemption unless one of the exceptions in section 14(1)(a) through (e) apply. In the circumstances of this appeal, I find that none of the exceptions apply and that the issue to be decided is whether the disclosure of the personal information at issue is presumed to be an unjustified invasion of personal privacy.

[47] If any of paragraphs (a) to (h) of section 14(3) apply, disclosure of the personal information at issue is presumed to be an unjustified invasion of personal privacy under section 14(1). In addition, 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>13</sup> However, section 14(4) lists situations that would not be an unjustified invasion of personal privacy.

[48] The police are claiming the application of the presumption in section 14(3)(b), as well as the factors in section 14(2)(f) and 14(2)(i).

[49] 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;

[50] Sections 14(2)(f) and 14(2)(i) state:

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,

(f) the personal information is highly sensitive;

. . .

(i) the disclosure may unfairly damage the reputation of any person referred to in the record.

[51] I find that the presumption in section 14(3)(b) applies to the personal information at issue, because the evidence before me shows that there was a police investigation into the death of the appellant's brother. I also agree with the police that the personal information at issue is highly sensitive and, as such, the factor in section 14(2)(f), which does not favour disclosure, is applicable. However, I find that the factor in section 14(2)(i) does not apply in these circumstances. That factor applies where disclosure of personal information may unfairly damage the reputation of another individual. On my review of the record, I do not find that any individual's reputation would be unfairly damaged by the disclosure of the recording. Because section 14(1) is a mandatory exemption, in addition to my finding that none of the exceptions apply, the presumption in section 14(3)(b) applies, and the factor in section 14(2)(h) applies, I find that the audio recording of the 911 call would be exempt from disclosure under different circumstances than those presented in this appeal.

[52] As previously stated, if any of paragraphs (a) to (c) of section 14(4) apply, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 14(1). I find that the application of the compassionate grounds for

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<sup>13</sup> Order P-239.

disclosure in section 14(4)(c) applies in these circumstances.

[53] In Order MO-2245, former Commissioner Brian 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.

[54] I adopt this approach in this appeal. On my review of the record, I find that the disclosure of the personal information about the circumstances surrounding the overdose and death of the appellant's brother is desirable for compassionate reasons. I am satisfied with the appellant's explanation that hearing the audio of the 911 call would assist him and his family in finding closure in dealing with this tragic situation.

[55] I further find that on compassionate grounds, the audio of the 911 call should be disclosed to the appellant after distortion of the caller's voice and severing the telephone number of the caller, as well as the address referred to in the record.

## **ORDER:**

1. I order the police to disclose the audio of the 911 call to the appellant by **November 9, 2020**, but not before **November 2, 2020**, subject to the following conditions:
  - the telephone number and address referred to in the record are to be severed; and
  - the voice of the 911 caller is to be distorted.
2. In order to verify compliance with order provision 1, I reserve the right to require the police to provide this office with a copy of the audio it discloses to the appellant.

3. The timelines noted in order provisions 1 and 2 may be extended if the police are unable to comply in light of the current COVID-19 situation, and I remain seized to consider any resulting extension request.

Original Signed By \_\_\_\_\_

Cathy Hamilton  
Adjudicator

October 2, 2020 \_\_\_\_\_