

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 PO-4124

Appeals PA18-00717 & PA19-00193

Ministry of the Solicitor General

March 22, 2021

**Summary:** The Ministry of the Solicitor General (the ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to police records relating to the death of the requester's son. After notifying an affected party, who objected to disclosure, the ministry issued a decision granting partial access to the responsive records with severances under the discretionary personal privacy exemption in section 49(b) of the *Act*. The requester, now the appellant, appealed the decision to withhold information and the affected party appealed the decision to disclose information. In this order, which considers both appeals together, the adjudicator upholds the ministry's access decision with respect to the information it has decided to disclose under the compassionate reasons exception at section 21(4)(d), with the exception of some additional personal information that she finds is exempt under sections 21(1) or 49(b). The adjudicator orders the ministry to disclose the non-exempt information to the appellant.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 2(1) (definition of personal information), 21(2)(f), 21(3)(b), 21(4)(d), and 49(b).

**Orders Considered:** Orders MO-2237, MO-2245, MO-2515 and PO-4087.

### OVERVIEW:

[1] This order addresses the issue of competing interests under the compassionate grounds exception to the personal privacy exemption in the *Freedom of Information and Protection of Privacy Act* (the *Act*) regarding information related to the death of an

individual. It involves a request submitted to the Ministry of the Solicitor General (the ministry) under the *Act* for access to police reports relating to circumstances surrounding the death of the requester's son.

[2] Prior to issuing its access decision, the ministry notified two affected parties of the request seeking their views on disclosure of the responsive records, which are records created by the Ontario Provincial Police (the OPP).<sup>1</sup> One of the affected parties (affected party A) objected to any disclosure of the records at issue. The ministry subsequently issued a decision to affected party A advising that partial access to the requested records was being granted in accordance with section 21(4)(d), the compassionate reasons exception to the personal privacy exemption in the *Act*. This exception allows for the disclosure of personal information to a close relative of a deceased individual, where disclosure is desirable for compassionate reasons.

[3] Subsequently, the ministry issued a decision to the requester advising that it was granting partial access to the responsive records. Access to the withheld information was denied pursuant to section 49(a) (discretion to refuse requester's own information) in conjunction with section 14(1)(l) (facilitate commission of a unlawful act), and section 49(b) (personal privacy) of the *Act*. The ministry also claimed that certain information was not responsive to the request.

[4] Affected party A appealed the ministry's decision to the Information and Privacy Commissioner of Ontario (the IPC) and Appeal PA18-00717 was opened. Subsequently, the requester appealed the ministry's decision to the IPC and Appeal PA19-00193 was opened. In this order, I will refer to the requester (the appellant in PA19-00193) as the appellant and affected party A (the appellant in PA18-00717) as the affected party.

[5] After the appeals were opened, the IPC contacted the second affected party (affected party B) who was previously notified by the ministry at the request stage. Affected party B consented to the disclosure of his personal information to the appellant. Accordingly, affected party B's personal information is no longer at issue in this appeal.

[6] During mediation, the affected party continued to object to the disclosure of any information contained in the records at issue. The appellant narrowed the information he was seeking to that on certain pages of the records. The appellant confirmed that he was not interested in information the ministry redacted under section 49(a) in conjunction with section 14(1)(l), or the information the ministry claimed was not responsive to his request. Accordingly, section 49(a) and responsiveness are no longer at issue in this appeal.

[7] As a mediated resolution was not possible, the appeal was transferred to the adjudication stage, where an adjudicator may conduct an inquiry under the *Act*. I commenced a joint inquiry into both appeals by inviting representations from the ministry

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<sup>1</sup> The OPP is part of the Ministry of the Solicitor General, and the ministry responds to access requests for OPP records.

and affected party, initially. I received representations from both. I shared the ministry's representations in their entirety with the appellant, but I shared only a summary of the affected party's representations due to confidentiality concerns. I then invited and received representations from the appellant.

[8] In this order, I find that the sections 21(1) or 49(b) personal privacy exemptions apply to the records at issue. I uphold the ministry's access decision with respect to the information it decided to disclose to the appellant for compassionate reasons under section 21(4)(d), with the exception of some personal information of the deceased. I order the ministry to withhold this additional information, which I have highlighted on a copy of the severed records provided to the ministry along with a copy of this order, when it discloses the non-exempt portions of the records to the appellant.

### **RECORDS:**

[9] The records at issue in this appeal consist of the following OPP reports:

Record 1 - a two-page Occurrence Summary (pages 1-2);

Record 2 - a five-page Homicide/Sudden Death Report (pages 3-7);

Record 3 - a one-page Supplementary Occurrence Report (page 8); and

Record 4 - a one-page untitled report (page 9).

[10] As noted above, the appellant narrowed the information he is seeking to that on certain pages of the records, specifically pages 2, 4-5, and 7-9. However, since the affected party is resisting disclosure of any information, all the records remain at issue in this appeal.

### **ISSUES:**

- A. Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?
- B. Does the mandatory personal privacy exemption at section 21(1) or the discretionary personal privacy exemption at section 49(b) apply to the information?
- C. Did the ministry exercise its discretion under section 49(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?**

[11] 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):

"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;

[12] 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>2</sup> 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 of the parties***

[13] The ministry submits that the records at issue were created as part of a missing person investigation and that they contain personal information. The ministry further submits that this personal information includes the name and address of the affected party, and details about that individual's involvement in the investigation to find the deceased, who was reported missing and was searched for by members of the OPP. The ministry submits that the personal information includes information that the affected party provided to the OPP about the deceased.

[14] The affected party acknowledges that their personal information and the deceased's personal information is contained in the records at issue, but does not elaborate further.

[15] The appellant acknowledges that his deceased son's information is contained in the records at issue, but he does not specifically address whether it is personal information as defined by section 2(1) of the *Act*.

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

[16] After reviewing the records and the representations of the parties, I find that the records at issue contain the mixed personal information of the appellant, his deceased son, the affected party, the deceased's children, and other individuals. To begin, I find that the records contain personal information about the deceased, such as his address, phone number, driver's licence, and the views or opinions of the affected parties about him immediately before his death. I find that this information fits within paragraphs (a), (b), (c), (d), (g), and (h) of the definition in section 2(1) of the *Act*. I also find that the records contain personal information about other identifiable individuals, such as the appellant, the affected party, the deceased's children, and others, that fits within paragraphs (a), (c), (d), and (e) of the definition in section 2(1) of the *Act*.

[17] As noted above, the appellant narrowed the information he is seeking to that on certain pages of the records. The appellant is not seeking access to the information withheld on pages 1, 3 and 6 of the records. I note that the withheld information on pages 2, 4-5, and 7-9 of the records, which the appellant continues to seek access to, consists only of the personal information of the appellant, the affected party, the deceased and his children. No personal information of other individuals remains at issue.

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<sup>2</sup> Order 11.

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

[18] I also note that the ministry has not withheld any of the appellant's personal information, which only appears in records 1 and 3, the Occurrence and Supplementary Occurrence Reports. For these two records, I must review the application of the discretionary personal privacy exemption in section 49(b) of the *Act*. However, records 2 and 4, the other OPP reports at issue in this appeal, do not contain the appellant's personal information; therefore, the relevant personal privacy exemption is the mandatory one in section 21(1).

**Issue B: Does the mandatory exemption at section 21(1) or the discretionary exemption at section 49(b) apply to the information?**

[19] Section 47(1) of the *Act* gives individuals a general right of access to their personal information held by an institution. Section 49 provides a number of exemptions from this right.

[20] Under section 49(b), found in Part III of the *Act*, where a record contains personal information of both the requester (in this case the deceased's father) 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. In this appeal, records 1 and 3 must be reviewed under section 49(b).

[21] In contrast, under section 21(1), found in Part II, where a record contains personal information of another individual but *not* the requester (the appellant), the institution is prohibited from disclosing that information unless one of the exceptions in sections 21(1)(a) to (e) applies, or unless disclosure would not be an unjustified invasion of personal privacy.<sup>4</sup> I will review records 2 and 4 under section 21(1).

[22] In applying either of the section 49(b) or 21(1) exemptions, sections 21(2) and (3) help in determining whether disclosure would or would not be an unjustified invasion of privacy. Also, section 21(4) lists situations that would not be an unjustified invasion of personal privacy.

[23] If the records are not covered by a presumption in section 21(3), section 21(2) lists various factors that may be relevant in determining whether disclosure of the personal information would be an unjustified invasion of personal privacy and the information will be exempt unless the circumstances favour disclosure.<sup>5</sup>

***Representations of the parties***

[24] The ministry submits that it withheld the affected party's personal information, because its disclosure would "presumptively" constitute an unjustified invasion of the affected party's personal privacy. The ministry argues that the presumption in section

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<sup>4</sup> Section 21(1)(f).

<sup>5</sup> Order P-239.

21(3)(b) applies in this appeal, because the affected party's personal information was collected during an OPP investigation into a possible violation of the law, and the affected party does not consent to its disclosure. The ministry further argues that while no charges were laid as a result of this investigation, that is not necessary for the presumption in section 21(3)(b) to apply.

[25] The ministry submits that the factor at section 21(2)(f) "highly sensitive" applies to the withheld information. The ministry notes that to be considered highly sensitive, there must be a reasonable expectation of significant personal distress if the information is disclosed.

[26] The ministry submits that it has applied the section 21(4)(d) compassionate reasons exception in the circumstances of the request, and it has considered the appellant's right to know about the circumstances of his son's death in accordance with section 21(4)(d). The ministry argues that it has addressed the purpose of section 21(4)(d) by providing the appellant with access to some of the information relating to the death of his son.

[27] The ministry submits that based on the circumstances of the appeal, further disclosure to the appellant is not desirable for compassionate reasons. The ministry argues that since the affected party has not consented to the disclosure of their personal information and due to its inherent sensitivity, any disclosure of the affected party's personal information would constitute an unjustified invasion of their personal privacy. The ministry submits that based on the facts of this appeal, the appellant's access rights under section 21(4)(d) do not override the affected party's privacy rights.

[28] The affected party submits that the release of the records at issue would violate the privacy of the deceased, the affected party and that of the deceased's children. The affected party submits that the records at issue contain highly sensitive information, and their disclosure would result in tremendous emotional consequences.

[29] The affected party submits that they are aware that the requester is the deceased's father. The affected party further submits that the requester has demonstrated that he has a lack of respect and compassion for the deceased by distributing and sharing what the affected party asserts is inaccurate and incomplete information about the deceased's passing on social media.

[30] The affected party submits that by his own admission, the appellant has been estranged from the deceased and his family for several years. The affected party further submits that the deceased did not have a relationship with the appellant and it would be against the deceased's wishes to have any of his private information shared with the appellant or anyone else.

[31] The affected party submits that the highly sensitive, private and personal information found in the records at issue should not be released, because it can be used to expose the deceased's children and family to further emotional heartache and turmoil.

[32] The appellant submits that he wants the records in order to obtain closure as a grieving parent. The appellant submits that the issues the affected party has raised in their representations have nothing to do with disclosure of a “public government document”. The appellant alleges that the affected party is only trying to block him from obtaining the truth about the death of his son. The appellant submits that he has never met his grandchildren and they do not know he exists. The appellant submits that it has been years since his son’s death and he wants as much disclosure as possible to obtain closure.

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

[33] Based on my review of the records and the representations of the parties, I find that sections 21(1) or 49(b) apply to the personal information at issue in records 1, 2 and 4 of this appeal. I also find that the compassionate reasons exception at section 21(4)(d) applies to the information that the ministry decided to disclose in its access decision, with one exception for additional personal information that I find is exempt from disclosure.

#### *Section 21(3)(b): investigation into possible violation of law*

[34] The ministry argues that the presumption in section 21(3)(b) applies to the personal information at issue. Section 21(3)(b) states:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information, was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation[.]

[35] Based on my review of the personal information at issue, which is contained in OPP reports, I am satisfied that it was compiled and is identifiable as part of an investigation into a possible violation of law. As noted above, the records were created as part of a missing person investigation and no criminal charges were laid. However, even if no criminal proceedings were commenced against any individuals, section 21(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of law.<sup>6</sup> Therefore, I find that the presumption at section 21(3)(b) applies to the personal information at issue in this appeal, and its disclosure is presumed to be an unjustified invasion of the personal privacy of the individuals to whom the information relates.

#### *21(2)(f) highly sensitive*

[36] In order for section 21(2)(f) to apply, the information at issue must be considered to be highly sensitive, which means there must be a reasonable expectation of significant

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<sup>6</sup> Orders P-242 and MO-2235.



personal distress if the information were disclosed.<sup>7</sup> The ministry argues that the factor in section 21(2)(f) applies to the personal information at issue in this appeal. While the affected party did not specifically refer to section 21(2)(f), they argue that the records at issue contain highly sensitive personal information that would cause distress to the deceased's children and family if the records were disclosed.

[37] From my review of the records, I am satisfied that the records at issue in this appeal contain information that is highly sensitive, since the records are related to the specific circumstances surrounding the deceased's death. I am satisfied that there is a reasonable expectation that the affected party and the deceased's children would experience significant personal distress if this information were disclosed to the appellant, the deceased's father. Therefore, I find that the highly sensitive factor at section 21(2)(f) applies to the information at issue and weighs in favour of non-disclosure.

[38] The parties did not argue that any other factor in section 21(2) applies to the personal information at issue, and I find that none apply in the circumstances of this appeal. I have also considered whether any unlisted factors favouring disclosure, such as inherent fairness issues, apply and I find that none do.

[39] Since I have found that the presumption against disclosure in section 21(3)(b) and the factor at section 21(2)(f) both apply and weigh against disclosure of the personal information at issue in this appeal, I must consider whether any of the exceptions in section 21(4) apply. The appellant argues that the personal information at issue should be disclosed so that he may have a better understanding of the circumstances of his son's death. Therefore, I will consider whether the compassionate reasons exception in section 21(4)(d) applies to the information at issue because if it does, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 49(b) or section 21(1).

*Does the compassionate reasons exception at section 21(4)(d) apply?*

[40] The application of section 21(4)(d) 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>8</sup>

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<sup>7</sup> Orders PO-2518, PO-2617, MO-2262 and MO-2344.

<sup>8</sup> Orders MO-2237 and MO-2245.

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

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

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

[42] I find that the records at issue contain the personal information of a deceased individual, specifically, the appellant's son, and that the appellant is a "close relative" of this individual as defined in the *Act*. Accordingly, I find that the first two requirements for the application of section 21(4)(d) have been met.

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

[43] As noted above, the records at issue contain the personal information of the appellant, the affected party, the deceased, and the deceased's children. The 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 21(2) may provide assistance in this regard, but the overall circumstances must be considered and weighed in any application of section 21(4)(d).<sup>9</sup>

[44] In Orders MO-2237 and MO-2245, former Commissioner Brian Beamish made the following findings:

... by using the words "in the circumstances" [in section 21(4)(d)]<sup>10</sup> the Legislature intended that a broad and all encompassing approach be taken to the consideration by this office of whether or not disclosure is "desirable for compassionate reasons." In my view, by enacting this amendment to the *Act*, the Legislature intended to address an identified gap in the access to information legislation and increase the amount of information being provided to bereaved family members. It is recognized that, for surviving family members, greater knowledge of the circumstances of their loved one's death is by its very nature compassionate.

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<sup>9</sup> Order MO-2237.

<sup>10</sup> Or section 14(4)(c) in the case of the *Municipal Freedom of Information and Protection of Privacy Act*, which Commissioner Beamish was considering in those appeals.

[45] In Order MO-2515, Adjudicator Laurel Cropley ordered the disclosure of records relating to police involvement with a deceased individual in the weeks prior to the individual's death, stating that:

In assessing the relevant circumstances of the current appeal, I give significant weight to the fact that the records at issue contain information about the deceased's health and physical state within a short period of time prior to his death. This information sheds some light on the deceased's circumstances shortly before his death [...] I also attribute significant weight to the appellant's need for this information as part of her grieving process.

[46] I adopt a similar approach in this appeal. 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>11</sup>

[47] I accept that the appellant requires the information related to the specific circumstances of his son's death in order to obtain closure. However, in these appeals, the affected party is resisting disclosure of any information contained in the records at issue, while the appellant wants disclosure of all the information at issue in this appeal. Adjudicator Steven Faughnan dealt with the balancing of competing interests under the compassionate reasons exception at section 21(4)(d) in Order PO-4087, where he stated:

. . . I accept that the deceased's father requires the information about the events surrounding his son's death for closure. However, section 21(4)(d) requires that the disclosure be desirable for compassionate reasons in relation to all the circumstances relating to the request. After considering all the circumstances surrounding the request and appeals, I find that the privacy interests of other individuals, including the deceased's spouse and her children, should not automatically yield to the compassionate reasons that may call for full disclosure to the deceased's father.

[48] I agree with Adjudicator Faughnan's reasoning and adopt it in this appeal. Having considered all the circumstances of this appeal, including the competing interests of the parties, I find that the compassionate reasons exception at section 21(4)(d) applies to the personal information that the ministry has decided to disclose to the appellant, except for one additional item of personal information that I will address below.

[49] However, I find that the appellant is not entitled to full disclosure of all the personal information at issue in this appeal. In coming to this conclusion, I considered that this was an unexpected death and that the appellant, the deceased's father, had been estranged from his son's family for many years. It is clear from the appellant's representations that

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

he continues to struggle with the death of his son. I give weight to the fact that the appellant is seeking disclosure to understand the circumstances of his son's death and to obtain closure. I have also considered the affected party's privacy concerns. I note that the portions of the records that the ministry decided to disclose do not contain the personal information of the affected party or the deceased's children, with the exception of one limited type of personal information. While I understand that the affected party also wants none of the deceased's personal information to be disclosed, I must weigh this against the appellant's right to access it under section 21(4)(d). In the circumstances of this appeal, I have concluded that the appellant's right to access the personal information identified by the ministry's decision outweighs the affected party's concerns about its disclosure. Based on all of this, I am satisfied that it is desirable, for compassionate reasons, to disclose some personal information of the deceased to the appellant in the circumstances of this appeal.

[50] With respect to the rest of the information at issue in records 1, 2 and 4, including the personal information that the ministry has decided to withhold, I find that the exception at section 21(4)(d) does not apply to this information. I considered the personal information that the ministry will be disclosing to the appellant through this request and what personal information will be withheld, and I find that the withheld information would not assist the appellant further in understanding the circumstances of his son's death. I also considered the privacy rights of the affected party and the deceased's children. The withheld portions of records 2 and 4 contain the personal information of the affected party and the deceased's children, and the withheld portions of record 1 only contain the personal information of the affected party. All of this is personal information that I have found to be highly sensitive under section 21(2)(f). Balancing the interests of the parties, I find that the privacy rights of the affected party and the deceased's children outweigh the appellant's right to this information. Therefore, I am not satisfied that disclosure of the rest of the personal information at issue in records 1, 2, and 4 would be desirable for compassionate reasons in the circumstances of this appeal.

[51] Accordingly, I find that the section 21(4)(d) exception applies to the information that the ministry has decided to disclose: portions of records 1, 2, and 4, and record 3 in its entirety, with the exception of one additional item of personal information. I find that this additional personal information in record 1 remains exempt under section 49(b), and is exempt under section 21(1) in records 2 and 4. I have highlighted this personal information, which I find does not fall within the section 21(4)(d) compassionate reasons exception, on a copy of the severed records provided to the ministry along with a copy of this order.

**Issue C: Did the ministry exercise its discretion under section 49(b)? If so, should this office uphold the exercise of discretion?**

[52] As the section 49(b) exemption is discretionary, and permits an institution to disclose information, despite the fact that it could withhold it, I must review the ministry's exercise of discretion in denying access to the personal information in record 1 that I found, above, to be exempt on that basis.

[53] An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

[54] 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.

[55] In either case, this office may send the matter back to the institution for an exercise of discretion based on proper considerations.<sup>12</sup> This office may not, however, substitute its own discretion for that of the institution.<sup>13</sup>

[56] Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant:<sup>14</sup>

- the purposes of the *Act*, including the principles that
  - information should be available to the public
  - individuals should have a right of access to their own personal information
  - exemptions from the right of access should be limited and specific
  - the privacy of individuals should be protected
- the wording of the exemption and the interests it seeks to protect
- whether the requester is seeking his or their own personal information
- whether the requester has a sympathetic or compelling need to receive the information
- whether the requester is an individual or an organization
- the relationship between the requester and any affected persons
- whether disclosure will increase public confidence in the operation of the institution

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<sup>12</sup> Order MO-1573.

<sup>13</sup> Section 54(2) of the *Act*.

<sup>14</sup> Orders P-344 and MO-1573.

- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person
- the age of the information
- the historic practice of the institution with respect to similar information.

### ***Representations***

[57] The ministry submits that it has exercised its discretion properly in not releasing the personal information at issue in this appeal. The ministry submits that it has exercised its discretion based on the inherent sensitivity of personal information created as part of a law enforcement investigation and the fact that the affected party has not consented to its disclosure. The ministry further submits that it has provided the appellant with as much information as possible in accordance with section 21(4)(d), while balancing the privacy rights of the affected party, who did not consent to disclosure of their personal information.

[58] The representations of the affected party and the appellant do not address the ministry's exercise of discretion.

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

[59] After considering the ministry's representations on its exercise of discretion and the circumstances of this appeal, I find that the ministry did not err in its exercise of discretion with respect to the application of section 49(b) to record 1. I am satisfied that the ministry did not exercise its discretion in bad faith or for an improper purpose. I am also satisfied that the ministry took into account relevant factors, and did not take into account irrelevant factors in its exercise of discretion.

[60] In particular, I am satisfied that the ministry properly considered the appellant's right to access his son's personal information under section 21(4)(d) in these circumstances, the privacy interests of other individuals, such as the affected party, and the impact that disclosure could have on the affected party and the deceased's children. Accordingly, I find that the ministry exercised its discretion in an appropriate manner to withhold the personal information that I found exempt in record 1 under section 49(b), and I uphold it.

### **ORDER:**

1. I uphold the ministry's access decision with respect to the information that it has decided to disclose to the appellant, except for certain information that I have highlighted on a copy of the severed records provided to the ministry along with a copy of this order.

2. I order the ministry to disclose to the appellant the information that is not highlighted in the copy of the severed records provided with a copy of this order. This information is to be disclosed by **April 26, 2021**, but not before **April 21, 2021**.
3. In order to verify compliance with order provision 2, I reserve the right to require the ministry to provide me with a copy of the record disclosed to the appellant.
4. The timelines noted in order provision 2 may be extended if the ministry is unable to comply in light of the current COVID-19 situation. I remain seized of the appeal to address any such extension requests.

Original Signed by: \_\_\_\_\_  
Anna Truong  
Adjudicator

\_\_\_\_\_ March 22, 2021