

Information and Privacy Commissioner,  
Ontario, Canada



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

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## FINAL ORDER MO-4158-F

Appeal MA19-00329

Toronto Police Services Board

February 4, 2022

**Summary:** The appellant made an access request to the Toronto Police Services Board (the police) for a copy of a 911 call recording relating to the death of her close relative. The deceased individual was living in a facility and was found unresponsive by a staff member of the facility, who called 911.

The police denied access to the 911 call recording, citing the personal privacy exemption in section 14(1) of the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA or the *Act*). The appellant appealed.

In Interim Order MO-3988-I, the adjudicator addressed some preliminary arguments raised by the police. She found that the police have custody of the record, and that the *Act's* provisions relating to the transfer of an access request to another institution are not available to the police in the circumstances of the appeal. She also found that the *Personal Health Information Protection Act, 2004* has no application in the circumstances.

The parties then made further arguments on the application of the personal privacy exemption in section 14(1) of the *Act*. In this final order, the adjudicator finds that the compassionate grounds provision in section 14(4)(c) of the *Act* applies, and therefore the personal privacy exemption in section 14(1) does not apply. She orders the police to disclose the 911 call recording to the appellant, with the exception of the portions of the call containing the employee's name and personal phone number, which the appellant does not seek.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, sections 2(1) (definition of "personal information") and 14.

**Orders Considered:** Orders MO-3988-I, MO-3594, PO-3296, PO-3093, PO-2225 and PO-1912.

## **OVERVIEW:**

[1] This final order addresses the claim of the Toronto Police Services Board (the police) that an audio recording of a 911 call is exempt from disclosure under the section 14(1) personal privacy exemption in the *Municipal Freedom of Information and Protection of Privacy Act* (*MFIPPA* or the *Act*). In this order, I find that the compassionate grounds provision at section 14(4)(c) applies, so that that personal privacy exemption in section 14(1) does not apply. As a result, I order the police to disclose the 911 call recording to the appellant.

[2] By way of background, a close relative of the appellant's had been living at a facility operated by a charitable organization. The facility provides short-term residential support for individuals living with serious mental illness who are experiencing a crisis. This close relative was found unresponsive at the facility and an employee of the organization called 911. The individual was taken to hospital, where he was pronounced deceased.

[3] (As I will explain below, "close relative" is a defined term in the *Act*.)

[4] After the individual's death, the appellant made a request to the police under the *Act* for access to the police report relating to the incident, as well as the audio recording of the 911 call.

[5] The police issued a decision granting the appellant some access to the requested records. The police granted partial access to a general occurrence report and a log of the 911 call titled "I/CAD Event Details Report," with some severances to these records. The police withheld the audio recording of the 911 call in its entirety. In their decision letter, the police said that in granting partial access to the records, they took into consideration section 14(4)(c) of the *Act*, which addresses disclosure of personal information about a deceased individual, where such disclosure is desirable for compassionate reasons. Where section 14(4)(c) applies, the section 14(1) personal privacy exemption does not apply.

[6] In denying access to portions of the occurrence report and call log, and to the 911 call recording in its entirety, the police relied on the personal privacy exemption at section 14(1) of the *Act*.<sup>1</sup> The police also stated the following about their decision to withhold the 911 call recording in its entirety:

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<sup>1</sup> The police also cited the section 38(b) personal privacy exemption, but that is not the appropriate personal privacy exemption to consider in circumstances where, as here, the record does not contain the requester's own personal information.

Additionally, it was determined that a written transcript of the 9-1-1 call would suffice at this time, as there would be difficulties obtaining third party authorization for the release of the 9-1-1 audio.

[7] During the mediation stage, the police clarified that the “written transcript” of the 911 call (referred to in the extract above) is a reference to the I/CAD Event Details Report. This report is not a transcript of the 911 call and does not contain the full contents of the 911 call.

[8] The appellant was dissatisfied with the police’s decision, and appealed it to the Information and Privacy Commissioner of Ontario (IPC). During the mediation stage of the appeal process, the appellant confirmed that she seeks access only to the audio recording of the 911 call, and is not pursuing the information redacted from the occurrence report and I/CAD report she received. The mediator notified the employee who had made the 911 call of the appeal. The employee (referred to in this order as the affected party) did not consent to disclosure of any of her information to the appellant.

[9] As no further mediation was possible, the appeal was transferred to the adjudication stage. The adjudicator originally assigned to the appeal sought and received representations from the police and the affected party on the section 14(1) personal privacy exemption in *MFIPPA* relied on by the police to withhold the 911 call recording.

[10] In their representations, the police clarified that their predominant argument was that since the affected party’s call to 911 had been transferred to the City of Toronto’s ambulance services, the police did not have custody of the audio recording of that call (which is the record at issue in this appeal), and that the city had a greater interest in the record. The police also argued that the *Personal Health Information Protection Act, 2004 (PHIPA)* applied to the record.

[11] I did not accept the police’s position, and in Interim Order MO-3988-I, I found that the police have custody of the 911 call recording, that the police did not transfer the request to the City of Toronto and it was too late for them to do so, and that *PHIPA* does not apply to the appellant’s access request to the police. I directed that my inquiry into the police’s application of the section 14(1) personal privacy exemption in *MFIPPA* to the 911 call recording would continue.

[12] I then sought and received additional representations from the parties. Representations were shared among the parties, with confidential portions withheld in accordance with the criteria for withholding representations in *Practice Direction 7*.

[13] In this order, I allow the appeal, and order disclosure of the 911 call recording to the appellant, with the exception of the affected party’s name and personal contact details, which the appellant does not seek.

## **RECORD:**

[14] The record at issue is an audio recording of a 911 call.

## **ISSUES:**

- A. Does the record contain personal information and if so, whose personal information is it?
- B. Does the personal privacy exemption in section 14(1) of the Act apply to the personal information in the record?

### **Issue A: Does the record contain personal information and if so, whose personal information is it?**

[15] The police have relied on the personal privacy exemption at section 14(1) to withhold the 911 call recording. In order to decide whether this exemption applies, I must first determine whether the call recording contains personal information belonging to individual(s) other than the appellant.

[16] Section 2(1) of the *Act* defines "personal information" as "recorded information about an identifiable individual."

[17] "Recorded information" is information recorded in any format, such as paper records, electronic records, digital photographs, videos, or maps.<sup>2</sup>

[18] Information is "about" the individual when it refers to them in their personal capacity, which means that it reveals something of a personal nature about the individual. Generally, information about an individual in their professional, official or business capacity is not considered to be "about" the individual.<sup>3</sup> See also sections 2(2.1) and (2.2), which state:

(2.1) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.

(2.2) For greater certainty, subsection (2.1) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

[19] In some situations, even if information relates to an individual in a professional,

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<sup>2</sup> See the definition of "record" in section 2(1).

<sup>3</sup> Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

official or business capacity, it may still be “personal information” if it reveals something of a personal nature about the individual.<sup>4</sup>

[20] Information is about an “identifiable” individual if it is reasonable to expect that an individual can be identified from the information either by itself or if combined with other information.<sup>5</sup>

[21] Section 2(1) of the *Act* gives a list of examples of personal information:

“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.

[22] The list of examples of personal information under section 2(1) is not a complete

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<sup>4</sup> Orders P-1409, R-980015, PO-2225 and MO-2344.

<sup>5</sup> Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

list. This means that other kinds of information can also be “personal information.”<sup>6</sup>

### ***Representations***

[23] At the outset, I will explain the terminology I use for the individuals discussed in this order. The appellant did not consent to sharing her identity with the affected party, except to the extent that the appellant is a “close relative” of the deceased individual within the meaning of that term as defined in *MFIPPA*. As a result, I will refer to the deceased individual by the terms “deceased individual” or “appellant’s (late) relative”.

[24] To reiterate, the record at issue is a recording of a 911 call made by the affected party in respect of the appellant’s late relative, who was found unresponsive at the facility where he was living. He was taken to the hospital, where he was pronounced deceased.

[25] The police submit that the record contains the mixed personal information of the appellant’s relative and the affected party. They submit that the “recorded vocalizations of the affected party” are her personal information as they contain her observations and actions in relation to the 911 call. They also submit that the affected party might be identifiable if the audio is disclosed.

[26] The affected party, too, submits that record contains her own personal information, as well as that of the deceased individual. She says it is reasonable to expect that she may be identified if the information is disclosed because her voice is heard on the 911 call.

[27] The affected party argues that the information is not about her in a professional capacity simply because she happened to be working at the time of the recording of the information. She says the recording contains no information about her as an employee of the charitable organization in question, such as information about her position or job responsibilities. The affected party provides representations on a number of IPC orders that have discussed 911 calls made from a workplace.

[28] The affected party further submits that even if the information is her professional information, it reveals something of a personal nature about her: the sound of her voice, the questions she asked the 911 operator, her responses to the questions of the operator and the general tone of her voice and manner of conversation. In the affected party’s submission, such information demonstrates how she responded and reacted personally, as an individual dealing with an emergency situation.

[29] In the affected party’s submission, this is to be contrasted to a call made by a health professional who has professional medical training to deal with such situations.

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<sup>6</sup> Order 11.

She argues that this distinction has been made in previous IPC orders.<sup>7</sup>

[30] The affected party submits that the location from which the call was made is not relevant to whether the information contained in the call recording constitutes her "personal information"; it is the substance of the information that is germane. She says that what was said in the 911 call recording, together with how it was said, is her personal information.

[31] The appellant says she is not requesting any personal information of the affected party, such as the affected party's name or phone number. In her view, the 911 call was made in a professional capacity and although there may be some personal information of the affected party (i.e., name and phone number), that personal information can be extracted from the 911 audio call while disclosing substance of the discussions. She says she is seeking information on "what was said not who said it". The appellant says that the I/CAD details report that the police provided to her was not complete.

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

[32] First, I find that the record contains the personal information of the appellant's late relative within the meaning of the definition of personal information in section 2(1) of the *Act*. It contains his name along with other information about him, most significantly his medical condition at the time of the 911 call. It also reveals that he was a resident at a facility for individuals with serious mental illness. The entire 911 call recording is, first and foremost, "about" the appellant's relative in his personal capacity.

[33] I will next consider whether the record also contains the affected party's personal information.

[34] I find at the outset that the affected party could reasonably be expected to be identified from disclosure of the 911 call recording, even with her personal details such as her name and personal phone number redacted. While I appreciate that the appellant says she wants only "what was said not who said it," she already knows that the affected party is a staff member of the facility in question. In my view, it is reasonable to expect that this knowledge, together with the specific information in the call recording, could enable the affected party to be identified.

[35] As I noted above, information is "about" an individual when it refers to them in their personal capacity, which means that it reveals something of a personal nature about the individual. Generally, information about an individual in their professional capacity is not considered to be "about" the individual.<sup>8</sup> However, in some situations, even if information relates to an individual in a professional capacity, it may still be

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<sup>7</sup> The affected party refers to Orders PO-3296, PO-3093, MO-2923, MO-2931, and MO-2924-I.

<sup>8</sup> Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

“personal information” if it reveals something of a personal nature about the individual.<sup>9</sup>

[36] The IPC has previously considered situations involving 911 calls made by individuals in the context of performing their job duties. In some cases, recordings of those conversations were found not to contain any personal information of these individuals, because those calls were made in a professional capacity. See, for example, Order PO-3296. In other cases, based on the particular circumstances, recordings of 911 calls made in a professional capacity were nonetheless found to reveal something of a personal nature about the callers, so that their information was found to be their personal information. See, for example, Order PO-3093. I have also reviewed the other orders the affected party refers to in her representations.

[37] In my view, it is clear, and I find, that the affected party made the call in her professional capacity. To address the affected party’s argument, above, it is not necessary that the call contain specific information about her position or job responsibilities in order to find that it contains information about her in a professional capacity. What is relevant instead is the context in which her information appears. Although the affected party argues that the 911 call could just as easily have been made by a visitor or another client, that is not what happened. The affected party made the call. She was a staff member on duty at the facility where the appellant’s relative lived. The facility provides short-term residential support to individuals with serious mental illness who are in crisis. It stands to reason that the job responsibilities of staff at this facility would include taking appropriate action, including calling for emergency services, if they find a resident unresponsive in the facility.

[38] However, the analysis does not end there. Deciding whether information recorded in a professional context is nonetheless “personal information” is a contextual exercise. Order PO-2225 sets out the two-part test that the IPC has consistently applied to assist in determining whether information appearing in a professional context is nonetheless “personal information”:

[T]he first question to ask in a case such as this is: “in what context do the names of the individuals appear”? Is it a context that is inherently personal, or is it one such as a business, professional or official government context that is removed from the personal sphere? ....

The analysis does not end here. I must go on to ask: “is there something about the particular information at issue that, if disclosed, would reveal something of a personal nature about the individual”? Even if the information appears in a business context, would its disclosure reveal something that is inherently personal in nature?

[39] I have reviewed the parties’ representations and have listened to the audio

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<sup>9</sup> Orders P-1409, R-980015, PO-2225 and MO-2344.

recording of the 911 call. In my view, except for the personal cell phone number of the affected party (which the appellant does not seek access to), there is nothing inherently personal about the information relating to the affected party, nor would disclosure reveal anything of a personal nature about her. The affected party argues that the record contains the sound of her voice, the questions she asked the 911 operator, her responses to the questions of the operator and the general tone of her voice and manner of conversation. In my view, all of this information relates to how the affected party, in her professional capacity, was responding to a situation that arose in a professional context, and does not reveal anything of a personal nature about her. I find, therefore, that it is not the affected party's personal information.

[40] Under the next heading, I will consider whether the personal privacy exemption at section 14(1) of the *Act* applies to the record. For the reasons given below, I conclude that the section 14(1) exemption does not apply, because the compassionate grounds exception at section 14(4)(c) applies in the circumstances. For the purposes of my analysis, below, I have treated the affected party's information as though it were personal information. I would reach the same conclusion applying my above finding that the affected party's information in the record is not her personal information within the meaning of the *Act*.

**Issue B: Does the personal privacy exemption at section 14(1) apply to the personal information in the record?**

[41] One of the purposes of the *Act* is to protect the privacy of individuals with respect to personal information about themselves held by institutions.

[42] Section 14(1) of the *Act* creates a general rule that an institution cannot disclose personal information about another individual to a requester. This general rule is subject to a number of exceptions.

[43] The section 14(1)(a) to (e) exceptions are relatively straightforward. If any of the five exceptions covered in sections 14(1)(a) to (e) exist, the institution must disclose the information. None of these exceptions applies here. In particular, section 14(1)(a), which requires disclosure if the affected party consents, does not apply because the affected party has not consented to the release of her personal information.

[44] The section 14(1)(f) exception is more complicated. It requires the institution to disclose another individual's personal information to a requester if disclosure would not be an "unjustified invasion of personal privacy."

[45] Other parts of section 14 must be looked at to decide whether disclosure of the other individual's personal information would be an unjustified invasion of personal privacy. In particular, sections 14(2), (3) and (4) help in deciding whether disclosure would or would not be an unjustified invasion of personal privacy.

[46] Sections 14(3)(a) to (h) should generally be considered first.<sup>10</sup> These sections outline several situations in which disclosing personal information is presumed to be an unjustified invasion of personal privacy.

[47] If one of these presumptions applies, the personal information cannot be disclosed unless:

- there is a reason under section 14(4) that disclosure of the information would *not* be an “unjustified invasion of personal privacy,” or
- there is a “compelling public interest” under section 16 that means the information should nonetheless be disclosed (the “public interest override”).<sup>11</sup>

[48] If the personal information being requested does not fit within any presumptions under section 14(3), one must next consider the factors set out in section 14(2) to determine whether or not disclosure would be an unjustified invasion of personal privacy. However, if any of the situations in section 14(4) is present, then I do not need to consider sections 14(2) or 14(3).<sup>12</sup> As I will explain below, section 14(4)(c) applies here, so I start with a consideration of that provision.

[49] The “compassionate grounds” provision in section 14(4)(c) 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.

[50] In considering section 14(4)(c), the institution (or on appeal, the IPC) must decide whether, “in the circumstances, disclosure is desirable for compassionate reasons,” taking into account factors such as the need to assist the requester in the grieving process.<sup>13</sup> After the death of an individual, it is generally that person’s spouse or close relatives who are in the best position to know if disclosure of particular kinds of personal information is in their “best interests.”<sup>14</sup>

[51] Personal information about an individual who has died can include information that also belongs to another individual. The factors and presumptions referred to in sections 14(2) and (3) may provide some help in deciding whether the personal

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<sup>10</sup> If any of the section 14(3) presumptions are found to apply, they cannot be rebutted by the factors in section 14(2) for the purposes of deciding whether the section 14(1) exemption has been established.

<sup>11</sup> *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.).

<sup>12</sup> Except to the degree appropriate in looking at section 14(4)(c): see paragraph 52 of this order.

<sup>13</sup> Order MO-2245.

<sup>14</sup> Order MO-2245.

information belonging to the other individual should be disclosed for compassionate reasons. However, the overall circumstances must be considered when deciding whether the disclosure of information under section 14(4)(c) would interfere with that individual's right to privacy.<sup>15</sup>

### ***Representations***

[52] Before setting out the parties' representations, I pause to note that the representations of the police and the affected party were premised on the assumption that the affected party's information in the record is her personal information within the meaning of the *Act*.

[53] I found, above, that the record contains only the personal information of the appellant's late relative, and does not contain the personal information of the affected party (except for her personal cell phone number, which the appellant does not seek). However, for the purposes of this discussion, I will assume in my analysis below that the affected party's information qualifies as her personal information within the meaning of that term in the *Act*.

[54] The police submit that, absent consent from the affected party, the appellant is not entitled to have access to the affected party's personal information. They submit that individuals are due "some measure of comfort and anonymity" when placing 911 calls.

[55] The police submit that the presumptions in paragraphs 14(3)(a) (medical history) and (b) (possible violation of the law) apply to the personal information in the record. The affected party also makes this submission.

[56] The affected party submits that there are a number of factors in section 14(2) that are also relevant in determining that disclosure would constitute an unjustified invasion of her personal privacy. She relies on the factors in paragraphs 14(2)(e), (f), (h) and (i), which, if established, favour non-disclosure of the record. Her representations on these factors were mostly withheld from the appellant for confidentiality reasons, but I have taken them into account. To paraphrase, the affected party argues that releasing her information to the appellant will result in unfair pecuniary or other harm to the affected party, will cause her great personal distress, and may unfairly damage her reputation.

[57] The police make similar arguments. The police also submit that the appellant's request for the 911 recording may not be for purposes of closure but rather to seek a remedy against the facility or its staff. They point out that although some information was released to the appellant predicated on the compassionate circumstances of the request, the appellant has never indicated that she seeks access to the 911 call recording for compassionate reasons or to aid in her grieving process.

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<sup>15</sup> Order MO-2237.

[58] The affected party and the police submit, further, that there are no factors, listed or unlisted, in section 14(2) that could result in a finding that disclosure of the record would not constitute an unjustified invasion of her personal privacy.

[59] The affected party argues there is a public interest in encouraging the “public” to call 911 when people are in distress, and that knowing that their calls might be disclosed to the world would discourage this practice. She says people should be encouraged to contact emergency services without fear of being subject to legal liability. Even recognizing the compassionate grounds for some disclosure of records relating to the appellant’s late relative, the affected party argues that this ground has been satisfied by the records the appellant has already received.<sup>16</sup>

[60] Finally, the affected party disputes the appellant’s assertion (see below) that the appellant has already heard the recording. The affected party says the appellant has provided no evidence to support her claim that the information is clearly within her knowledge. Thus, the affected party submits that the “absurd result” principle does not apply. (I explain the “absurd result” principle below in my analysis and findings).

[61] The appellant says that although she has received the I/CAD event log summarizing the 911 call, it does not include all the conversations/instructions that were given to the affected party by the 911 operator at the time of the incident.

[62] The appellant also argues that she has already heard the full 911 call and that, on that basis, it would be absurd to apply the section 14(1) exemption. The police say that they never released the call to her but go on to state that “as the appellant states having heard the entire audio, the written ICAD should only serve to support her recollection.” The police argue that even if the audio is already within the appellant’s knowledge, providing her with a copy of the audio would be inconsistent with the purpose of the section 14(1) exemption claim, and that protecting the personal privacy of the affected party in this instance should prevail.

[63] The affected party made reply representations that largely repeat and refer to her earlier representations, but they offer some new factual information that the parties had not previously provided. The affected party did not consent to sharing these latter portions of her representations with the appellant, but I have taken them into account.

***Analysis and findings on the application of the section 14(1) personal privacy exemption***

[64] I begin by briefly addressing the parties’ arguments on the “absurd result” principle. This issue was raised as a result of the appellant’s assertion that she has already heard the 911 recording.

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<sup>16</sup> The affected party relies on Order MO-3790, which in turn refers to other IPC orders that have found that section 14(4)(c) does not apply where the requester is already in possession of information sufficient to have an understanding of the events surrounding their family member’s death.

[65] An institution might not be able to rely on the section 14(1) exemption in cases where the requester originally supplied the information in the record, or is otherwise aware of the information contained in the record. In this situation, withholding the information might be absurd and inconsistent with the purpose of the exemption.<sup>17</sup>

[66] For example, the “absurd result” principle has been applied when:

- the requester sought access to their own witness statement,<sup>18</sup>
- the requester was present when the information was provided to the institution,<sup>19</sup> and
- the information was or is clearly within the requester’s knowledge.<sup>20</sup>

[67] However, if disclosure is inconsistent with the purpose of the exemption, the absurd result principle may not apply.<sup>21</sup>

[68] There is conflicting evidence before me about whether the appellant has already heard the 911 call recording. In the circumstances, I find that the “absurd result” principle does not apply.

[69] Next, I address the police’s argument that they cannot disclose the record without the consent of the affected party. The police are mistaken in this respect. One of the exceptions to the section 14(1) exemption is found in section 14(1)(a), which requires disclosure if the individual whose personal information is in the record consents. However, the exception in section 14(1)(f) – where disclosure is required if it would not constitute an unjustified invasion of personal privacy – is a separate exception. Consent is not required for section 14(1)(f) to apply.

[70] I will next consider whether the compassionate grounds provision in section 14(4)(c) applies. If it does, then disclosure is not an unjustified invasion of the personal privacy of the appellant’s late relative or of the affected party. In that case, the exception in section 14(1)(f) applies, meaning that the section 14(1) exemption does not apply and the information must be disclosed to the appellant.

[71] Section 14(4)(c) provides for the disclosure of the personal information of a deceased individual, if disclosure to a spouse or “close relative” would be desirable for compassionate reasons.

[72] In order for section 14(4)(c) to apply, the following conditions must be met:

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<sup>17</sup> Orders M-444 and MO-1323.

<sup>18</sup> Orders M-444 and M-451.

<sup>19</sup> Orders M-444 and P-1414.

<sup>20</sup> Orders MO-1196, PO-1679 and MO-1755.

<sup>21</sup> Orders M-757, MO-1323 and MO-1378.

1. the records must contain the personal information of someone who has died,
2. the requester must be a spouse or "close relative" of the deceased individual, and
3. the disclosure of the personal information of the deceased individual must be desirable for compassionate reasons given the circumstances of the request.<sup>22</sup>

[73] I found above that the record contains the personal information of the deceased individual. The terms "spouse" and "close relative" are 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. Here, the appellant is a close relative of the deceased individual.

[74] Next, I must determine whether, "in the circumstances, disclosure is desirable for compassionate reasons," taking into account factors such as the need to assist the appellant in the grieving process.<sup>23</sup> After the death of an individual, it is generally that person's spouse or close relatives who are in the best position to know if disclosure of particular kinds of personal information is in their "best interests."<sup>24</sup>

[75] Personal information about an individual who has died can include information that also belongs to another individual. As I noted above, the factors and presumptions referred to in sections 14(2) and (3) may provide some help in deciding whether the personal information belonging to the other individual should be disclosed for compassionate reasons. However, the overall circumstances must be considered when deciding whether the disclosure of information under section 14(4)(c) would interfere with that individual's right to privacy.<sup>25</sup>

[76] I have listened to the 911 call recording and considered the circumstances of the appellant's access request. I have also taken into account the parties' representations, including the affected party's extensive representations, both the confidential and non-confidential portions.

[77] Although the appellant did not provide extensive representations, I accept that she is seeking access to the record in order to achieve some measure of closure in relation to her relative's death. The police observe that the appellant "has never indicated that she seeks access to the 911 call recording for compassionate reasons or to aid in the grieving process." However, this submission seems at odds with the police's initial access decision, which was to provide partial access to some records to the appellant on the basis of the compassionate grounds provision.

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<sup>22</sup> Orders MO-2237 and MO-2245.

<sup>23</sup> Order MO-2245.

<sup>24</sup> Order MO-2245.

<sup>25</sup> Order MO-2237.

[78] In any event, having reviewed the entire file, it is clear to me that the appellant wants the 911 recording in order to have a better picture of what happened in her relative's final moments. As I discuss further below, the affected party and the police imply that the appellant seeks to hold the affected party and/or others accountable for the events in question on the day her relative died. However, in my view, even if the appellant has questions or concerns about how the incident in question was handled, that is not incompatible with the appellant's also wanting the record for closure or to assist in her grieving process. Indeed, the two could easily go hand in hand.

[79] I also accept that the disclosure that has already been provided to her is not sufficient to address that need. I have reviewed the records that were provided to the appellant and they are missing the many nuances and additional information that are contained in the call recording itself.<sup>26</sup>

[80] I now turn to the privacy interests of the appellant's deceased relative and the affected party. In considering their privacy interests, I have taken into account the factors and presumptions in sections 14(2) and (3), and the overall circumstances of this matter.

[81] First, I find that the record contains highly sensitive personal information about the appellant's late relative, including medical information.<sup>27</sup> As I stated at the outset, the 911 call record is, first and foremost, a record "about" the appellant's relative and the efforts made to help him when he was found unresponsive at a facility for individuals with serious mental illness.

[82] The recording also contains the information of the affected party, which for the purposes of this analysis I am assuming is her "personal information". This information consists of the affected party's conversation with the 911 operator, and includes the questions and answers exchanged between the two and the affected party's actions in relation to the relative's condition.

[83] I accept the affected party's submission that individuals should be encouraged to call 911 to assist others who are in need of assistance. However, I am not convinced that the prospect of disclosure of the call recording at issue would have the chilling effect the affected party refers to. In any event, even if such a chilling effect is a concern, I give it limited weight in the circumstances. The affected party is not a member of the public who called 911 to assist a stranger. She was an employee of the facility where the appellant's relative was living and, in my view, was morally, if not legally, bound to call 911 in the circumstances. I disagree that others in the same position would be deterred from calling 911 in similar circumstances, simply because they are aware that a recording of their call might be disclosed.

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<sup>26</sup> For the benefit of the affected party, I note that I have reviewed her confidential representations in this regard.

<sup>27</sup> See sections 14(2)(f) and 14(3)(a).

[84] I also disagree that this 911 call recording is part of an investigation into a possible violation of law (section 14(3)(b)). The occurrence report states, "officers completed their notes and cleared as it was medical call only."<sup>28</sup> I agree with the reasoning in Order MO-3594, and other orders, that have found that calls for medical assistance do not become investigations into a possible violation of law, for the purposes of section 14(3)(b), simply on the basis that the police attended and were involved in the matter.

[85] The affected party argues that "people should be encouraged to contact emergency services without fear of being subject to legal liability." I take this statement to mean that the affected party is concerned that the appellant might take legal action against her. I note that previous IPC orders, in deciding whether pecuniary harm would be "unfair",<sup>29</sup> have found that a judgment against an individual after a legal proceeding is not "unfair."<sup>30</sup> I agree with those orders, and in my view, similar reasoning applies here.

[86] The affected party also argues that disclosure will cause her great personal distress, and elaborates on this in the confidential portions of her representations. I accept that the release of the record will result in the affected party's experiencing personal distress.

[87] I have considered all the circumstances of this matter, including the appellant's desire to know what happened to her relative, as well as the privacy interests of both her relative and the affected party. In my view, this is a situation where the appellant's interests must prevail. As I noted above, there is information in the audio call that the appellant does not appear to yet have in her possession, and that, in my view, will provide her with a more complete picture of what transpired on the day her relative died. Providing her with this information necessarily entails providing her with the personal information of her deceased relative and the information of the affected party, which I have treated as personal information for the purposes of this analysis. Although the privacy interests of these parties cannot be discounted, in my view they are not significant enough in the circumstances to justify withholding information from the appellant that could provide her with a measure of closure in relation to this tragic event.

[88] For the above reasons, I find that disclosure of the record is desirable for compassionate reasons. Therefore, section 14(4)(c) applies to the record and, as a result, the personal privacy exemption in section 14(1) does not apply. The police have not claimed any other exemptions and there are no other mandatory exemptions that could apply. As a result, I will order the police to disclose the record to the appellant, save for the portion containing the affected party's name and personal contact details,

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<sup>28</sup> This phrase appears in the portion of the occurrence report that the police disclosed to the appellant.

<sup>29</sup> Under section 14(2)(e) of the *Act*.

<sup>30</sup> See, for example, Order PO-1912.

which the appellant has stated she is not seeking. The police will have to sever those portions of the audio before disclosing the remainder.

**ORDER:**

I do not uphold the police's access decision. I order the police to disclose the record to the appellant, with the affected party's name and personal contact details redacted. This disclosure is to be made by **March 14, 2022** but not before **March 9, 2022**.

Original Signed by: \_\_\_\_\_

Gillian Shaw  
Senior Adjudicator

February 4, 2022 \_\_\_\_\_