

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4184

Appeal MA19-00715

Owen Sound Police Services Board

March 31, 2022

Summary: The appellant sought access to records relating to the death of his son. The police withheld portions of the responsive records on the basis of the discretionary exemptions in sections 38(a) and (b) of the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). In this order, the adjudicator finds that the records contain the personal information of the appellant's son and affected parties, but not the appellant. She orders the police to disclose a severed version of the records based on the application of the compassionate reasons exception in section 14(4)(c) of the *Act*, with the names and addresses of affected parties removed.

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)(f), 14(3)(b) and 14(4)(c).

Orders and Investigation Reports Considered: Orders MO-2237, MO-2245 and MO-2515.

OVERVIEW:

[1] This appeal is about access to two written witness statements and their corresponding audio recordings, relating to the sudden death of the appellant's son. The appellant made a request to the Owen Sound Police Services Board (the police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to information relating to his son's death, which the police determined was the result of a self-inflicted wound. The request was for:

All records pertaining to the death of [named individual] on [date] in the City of Owen Sound including (but not limited to):

Police officers' notes, investigating officers' notes, witness statements, timeline of the incident from 911 call to arrival of the ambulance, forensics (eg. results of analysis of prints or blood on the weapon).

[2] The police issued a decision granting partial access to responsive records. The police denied access to the withheld records pursuant to the law enforcement, danger to health or safety, and personal privacy exemptions in the *Act*.¹ The police also withheld records they identified as "non-responsive" to the request and explained that they were unable to locate audio for the 911 call because it had been purged in accordance with the police's records retention policy.

[3] The appellant appealed the police's decision to the Office of the Information and Privacy Commissioner of Ontario (the IPC). The parties participated in mediation to explore resolution.

[4] During mediation, the police indicated that they released some additional information to the appellant on the basis of the compassionate grounds provision in section 14(4)(c) of the *Act*. Also, two affected parties consented to disclosure of their witness statements, and the police disclosed those statements to the appellant as well.

[5] The mediator was able to contact a third affected party whose witness statement the police had withheld. That affected party informed the mediator that they did not want to consent to disclosure of their witness statement to the appellant. There was one other party whose witness statement the police withheld, but the police's and the IPC's attempts to contact that individual were unsuccessful.

[6] By the end of mediation, the police had revised their position to deny access to the remaining records based on the discretionary exemption section 38(a), read with the various parts of the law enforcement exemption in section 8(1) and the danger to health or safety exemption in section 13; and the discretionary personal privacy exemption in section 38(b), read with the presumptions in sections 14(3)(b) and 14(3)(g).²

[7] The police also claimed that disclosure would constitute an unjustified invasion of personal privacy under the mandatory personal privacy exemption in section 14(1), taking into consideration the presumption in section 14(3)(b) (investigation into possible violation of law) and the factor favouring privacy protection in section 14(2)(f) (highly sensitive). The police maintained their decision to deny access to records that they determined were not responsive to the request.

¹ The police's decision cited the exemptions in sections 8(1)(a), 8(1)(b), 8(1)(c), 8(1)(l), 14(3)(a), 14(3)(b), 14(3)(g), 13, 14(2)(e), 14(2)(f), 14(2)(g), 14(2)(h), 14(2)(i) and 38(b) of the *Act*.

² Section 14(3)(g) states that disclosure of personal information is presumed to constitute an unjust invasion of personal privacy if the personal information consists of personal recommendations or evaluations, character references or personnel evaluations.

[8] The appellant asked that the file proceed to adjudication on the issue of access to the withheld audio recordings and witness statements of two affected parties (being the affected party that the IPC was not able to contact, and the affected party who did not consent to disclosure of their personal information). The appellant indicated that he does not seek access to the affected parties' names, and that he is not seeking access to the withheld information in any of the other records. Accordingly, access to the affected parties' names, where they appear in the records at issue, was removed from the scope of this appeal, as well as access to any withheld records or portions of records other than the affected parties' witness statements.

[9] As a mediated resolution of the appeal could not be reached, the file was transferred to the adjudication stage of the appeal process, where an adjudicator may conduct an inquiry under the *Act*. An adjudicator began an inquiry, during which she invited the police, the appellant and one affected party³ to submit representations. The police and the appellant submitted representations. The affected party did not submit representations, informing the IPC only that she did not want any of her personal information disclosed to the appellant. Non-confidential portions of the police's and the appellant's representations were shared amongst them in accordance with the IPC's *Practice Direction 7* on the sharing of representations.

[10] In their representations, the police withdrew their claim that the withheld information is exempt under section 38(a), read with the exemptions in sections 8 and 13, and did not rely on the presumption against disclosure in section 14(3)(g). However, they continue to rely on the presumption in section 14(3)(b), which states that disclosure of information that was compiled and is identifiable as part of an investigation into a possible violation of law is presumed to constitute an unjustified invasion of personal privacy.

[11] After the parties' initial representations were received, the appeal was transferred to me to continue the inquiry. I sought the police's representations in reply to the appellant's representations on the compassionate reasons exception in section 14(4)(c). I also sought representations from the affected party or, in the alternative, consent to disclosure of portions of her witness statement (with her identifying information removed). The affected party did not consent. The affected party opposed disclosure of her personal information in the records, but did not submit representations on the specific issues in this appeal, including whether any personal information in the records should be disclosed for compassionate reasons (discussed below).

[12] In this decision, I uphold the police's decision to withhold the audio recordings of the witnesses' statements. I also uphold the police's decision to withhold the names and addresses of the witnesses whose statements are at issue, and the names of other identifiable individuals other than the appellant's son. However, I order the police to disclose portions of the two witness statements that contain the witnesses' observations and views of the circumstances preceding the appellant's son's death based on the

³ The IPC was only able to obtain contact information for one of the two affected parties whose witness statement remains at issue.

application of the compassionate grounds exception to section 14(1) found in section 14(4)(c) of the *Act*.

RECORDS:

[13] The records at issue are the written witness statements taken from two affected parties, and the corresponding recordings of those witness statements.⁴

ISSUES:

- A. Do the records contain personal information and if so, whose?
- B. Does the mandatory personal privacy exemption at section 14(1) apply to the information at issue?

DISCUSSION:

A: Does the record contain “personal information” as defined in section 2(1) and, if so, whose personal information is it?

[14] In order to decide which section of the *Act* may apply to a specific case, the IPC must first decide whether the records contain “personal information,” and if so, to whom that personal information relates.

[15] Section 2(1) of the *Act* defines “personal information” as “recorded information about an identifiable individual.” Recorded information is information recorded in any format, including paper and electronic records.

[16] Information is “about” the individual when it refers to them in their personal capacity, meaning that it reveals something of a personal nature about them. 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.⁵

[17] Section 2(1) gives a list of examples of personal information. The examples relevant to this appeal are the following:

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

⁴ The records are discrete witness statements. They are also contained in a Homicide/sudden death report, parts of which were disclosed to the appellant. No other components or contents of that Homicide/sudden death report are at issue in this appeal.

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

(a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of 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,

...

(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.

[18] The list of examples of personal information under section 2(1) is not a complete list. This means that other kinds of information could also be "personal information."⁶

[19] It is important to know whose personal information is in the records. If the records contain the requester's own personal information, their access rights are greater than if it does not.⁷ Also, if the records contain the personal information of other individuals, one of the personal privacy exemptions might apply.⁸

Representations

The police's representations

[20] The police submit that the records contain the personal information of the witnesses who provided the information during the police's investigation. The police say that the records outline "what the witnesses saw and/or did pertaining to the domestic situation prior to the sudden death" of the appellant's son. The police submit that the records also contain the witnesses' names, addresses, and their views and opinions about the deceased and third parties, and that the information qualifies as their personal information under paragraphs (d), (e), (g) and (h) of the definition in section 2(1) of the *Act*.

⁶ Order 11.

⁷ Under sections 36(1) and 38 of the *Act*, a requester has a right of access to their own personal information, and any exemptions from that right are discretionary, meaning that the institution can still choose to disclose the information even if the exemption applies.

⁸ See sections 14(1) and 38(b).

The appellant's representations

[21] The appellant reiterates that he does not seek access to the witnesses' identifying information such as their names or addresses. He submits that he only seeks access to their statements in order "to know the circumstances of his son's death," and is "not looking for information that would identify the witnesses in any way."

The affected party's representations

[22] The affected party (whom the police and the IPC were able to contact) opposes disclosure of any of their personal information in the records.

Analysis and findings

[23] The records contain names and addresses of witnesses, as well as their views, opinions and observations of the events immediately preceding the appellant's son's death. The records also contain names and identifying information of other witnesses, which if disclosed, could reveal other personal information about them.

[24] The parties have not made any representations relating to the audio recordings of the witness statements at issue. I have reviewed the audio recordings and I find that they contain the witnesses' voices. I find that disclosure of their voices would likely render them identifiable to the appellant. In the circumstances, I find that the witnesses' voices are their personal information under section 2(1) of the *Act* because it is recorded information about them that would likely identify them if disclosed. In coming to this conclusion, I have considered that prior IPC orders have found individuals' voices (in the case of 911 calls) to be their personal information.⁹ Although the records at issue are not 911 calls, they are nevertheless audio recordings of individuals' interviews with the police. I am satisfied that disclosure of the audio recordings would render the witnesses identifiable to the appellant in the circumstances, through their voice and sex.

[25] Collectively, therefore, I find that the records contain information that fits within the definition of "personal information" in paragraphs (a), (d), (e), (g) and (h) of section 2(1) of the *Act*.

[26] Although the inquiry proceeded on the basis that the records may contain the appellant's personal information, I have reviewed the records and find that they do not. As a result, I will consider whether the personal information of the appellant's son and other identifiable individuals is exempt from disclosure under the mandatory personal privacy exemption in section 14(1) of the *Act*, rather than the discretionary one in section 38(b). However, regardless of whether my analysis is based on section 38(b) or 14(1), I am satisfied that disclosure of portions of the records at issue is desirable for compassionate reasons under section 14(4)(c), as I explain below.

⁹ See, for example, Orders MO-3699, PO-4020, PO-4027 and PO-4190.

B: Does the mandatory personal privacy exemption at section 14(1) of the Act apply to the information at issue?

[27] As noted above, the police initially claimed that the information was exempt from disclosure under the discretionary exemption in section 38(a), read with certain law enforcement exemptions. At mediation, they added the discretionary personal privacy exemption in section 38(b).

[28] Section 38(a) addresses requests for access to one's own personal information, which an institution may refuse to disclose if certain sections (such as the law enforcement exemptions in section 8) would apply to disclosure of that personal information. Under the section 38(b) exemption, if a record contains the personal information of both the requester and another individual, the institution may refuse to disclose the other individual's personal information to the requester if disclosing it would be an unjustified invasion of the other individual's personal privacy.¹⁰

[29] As I have found above, based on my review of the records, while they contain the personal information of the appellant's son and that of other identifiable individuals (affected parties), they do not contain the appellant's personal information. Therefore, in my view, the appropriate exemption to consider is the exemption in section 14(1).

[30] 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. The section 14(1)(a) to (e) exceptions are relatively straightforward; if any of them exist, the institution must disclose the information. The parties do not submit that any of the section 14(1)(a) to (e) exceptions apply, and I find that none do.

[31] The section 14(1)(f) exception is more complex. It requires the institution to disclose another individual's personal information to a requester only if this would not be an "unjustified invasion of personal privacy." Other parts of section 14 must be looked at to decide whether disclosure of the other individuals' personal information would be an unjustified invasion of their personal privacy. 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. Section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy. Finally, section 14(4) identifies circumstances in which disclosure is not an unjustified invasion of personal privacy.

[32] If none of the presumptions in section 14(3) apply, the police must consider the application of the factors listed in section 14(2), as well as other considerations that may be relevant in the circumstances of a case. Some of the factors in section 14(2) weigh in favour of disclosure, while others weigh against disclosure. If a presumption

¹⁰ However, the requester's own personal information, standing alone, cannot be exempt under section 38(b) as its disclosure could not, by definition, be an unjust invasion of another individual's personal privacy; Order PO-2560.

listed in section 14(3) is established, it cannot be rebutted by either one or a combination of the factors set out in section 14(2). In other words, if disclosure of the personal information is presumed to be an unjustified invasion of personal privacy under section 14(3), section 14(2) cannot change this presumption.

[33] A presumption in section 14(3) can, however, be overcome if the personal information is found to fall within an exception in section 14(4) of the *Act* (or if a finding is made under section 16 of the *Act* that a compelling public interest exists in the disclosure of the record that clearly outweighs the purpose of the section 14(1) exemption¹¹).

[34] Of the circumstances listed in section 14(4), section 14(4)(c) is relevant to this appeal. Section 14(4)(c) provides that, despite a presumption in section 14(3), disclosure does not constitute an unjustified invasion of personal privacy if it discloses personal information about a deceased individual and the head is satisfied that, in the circumstances, the disclosure is desirable for compassionate reasons.¹²

[35] 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 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) would interfere with that individual's right to privacy.¹³

[36] For the reasons that follow, I find that disclosure of portions of the written witness statements is desirable for compassionate reasons pursuant to section 14(4)(c) and would therefore not constitute an unjustified invasion of personal privacy.

Representations

The police's representations

[37] The police submit that the records consist of witness statements made by third parties. Although they submitted representations focusing on section 38(b), the police also say that the exemption in section 14(1) is mandatory, and that, despite their efforts, the police were unable to obtain consent of the affected parties to disclose the statements. The police acknowledge that it would be helpful for the appellant to have access to the information at issue so that he could better understand the entire picture, but say that the mandatory exemption requires them to consider the personal privacy of the affected parties. The police submit that they did seek the affected parties' consent (which they submit the IPC also sought during mediation), but that one

¹¹ *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div. Ct.). The public interest override is not relevant to this appeal.

¹² According to section 2(2) of the *Act*, personal information does not include information about an individual who has been dead for more than 30 years. This is not the case here.

¹³ Order MO-2237.

affected party did not provide consent while the other did not respond.¹⁴

[38] The police also rely on the presumption against disclosure in section 14(3)(b) to withhold the information at issue. They say that, notwithstanding that no charges were laid, the information was collected during their investigation into a possible violation of law: they were called to respond to a potential domestic dispute that resulted in the discovery of the appellant's son's body a short distance from the location of the disturbance, and began an investigation. According to the police, because the appellant's son had already died by the time they found him, they proceeded with a sudden death investigation to determine whether his death was the result of criminal intent. The police say that their conclusion that the appellant's son died as a result of self-inflicted wounds does not mitigate the fact that the information at issue was collected from the witnesses during an investigation.

[39] The police say that certain factors in section 14(2) apply to weigh against disclosure of this information. They say that the two witness statements can be considered to be highly sensitive since they contain the particulars of the appellant's son's death, the circumstances surrounding it, the nature of his personal relationships, and information relating to the witnesses themselves, referring to the factor at section 14(2)(f) (highly sensitive).

[40] The police also submit that the factor at section 14(2)(h) (supplied in confidence) applies and weighs against disclosure because the witnesses provided the information during the course of a police investigation. The police submit that there is a heightened expectation of confidentiality when people give information to the police.

[41] With respect to the exception in section 14(4), the police submit that they recognize and are sympathetic to the impact the appellant's son's death has had on the appellant's family and community. The police's representations appear to acknowledge that disclosure could help the appellant move toward closure. The police say that, in this regard, the lead investigator has met with the appellant and that the vast majority of the file has been disclosed. With respect to the remaining two witness statements at issue, the police reiterate that they made efforts to locate the witnesses in the hopes of securing their consent, but were not able to do so.

The appellant's representations

[42] The appellant submits that his motivation for seeking access to the records is to find closure, which he says the information disclosed so far has not brought. Rather, he says it has raised additional questions about the circumstances of his son's death.

[43] The appellant submits that the presumption in section 14(3)(b) does not apply because the investigation is over, having ended approximately one month after his son's death.

¹⁴ Based on the information before me, the affected party whom the police and the IPC were unable to contact may have no fixed address.

[44] The appellant disputes that the factor at section 14(2)(f) applies to weigh against disclosure and says that the highly sensitive nature of the information should not be a barrier to access. He submits that, although the police say they have withheld the records because they contain the particulars of his son's death and its surrounding circumstances, they nevertheless "shared the grisly autopsy photos" with the appellant and that it is not likely that anything in severed witness statements could be more sensitive.

[45] The witnesses' observations regarding the circumstances surrounding his son's death are exactly what the appellant says he seeks access to.

[46] The appellant also submits that, although no police investigation can tie up every loose investigative end, anomalies about things like bruises and abrasions found on his son's body, the lack of forensic evidence on the knife witnesses say the appellant's son used to stab himself, and gaps between the time of the stabbing and the time when the appellant's son was found, raise questions the appellant says have pushed closure further out of reach. The appellant submits that the information thus far disclosed does not answer gaps in time between the altercation and his son's death, questions arising from the location of blood droplets, or why, if the appellant stabbed himself, no one called for help. The appellant says that, although according to the coroner's report, his son was intoxicated the day he died, he was "getting his life together," was employed, and had stopped drinking. The appellant submits that there is too much uncertainty for him and his family to find closure based on what the police have thus far disclosed. He says that the witnesses whose statements are at issue were at the house where an altercation allegedly took place before his son's death, and he believes their statements could help lay this matter to rest.

Analysis and findings

[47] As indicated above, I find that disclosure of portions of the written witness statements is desirable in the circumstances for compassionate reasons.

[48] The exception 14(1)(f) allows the police to disclose information if disclosure does not constitute an unjustified invasion of personal privacy. Sections 14(3) and (4) are relevant to my determination that that disclosure does not constitute an unjustified invasion of personal privacy in the circumstances.

Section 14(3)(b): investigation into possible violation of law

[49] As noted above, the police rely on the presumption against disclosure in section 14(3)(b). Section 14(3)(b) states that:

(3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

(b) 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 continue the investigation.

[50] I find that the personal information in the records was compiled and is identifiable as part of an investigation into a possible violation of law. Responding to a 911 call about an apparent sudden death, the police began an investigation into the circumstances that could have resulted in criminal charges. The fact that no charges were laid, that the police concluded that the death was not criminal in nature, or that the investigation was not, as the appellant submits, lengthy, are immaterial, since the presumption only requires that there be an investigation into a possible violation of law.¹⁵

[51] As a result, I find that the presumption against disclosure in section 14(3)(b) applies and that disclosure of the information at issue is presumed to constitute an unjustified invasion of the affected parties' personal privacy. As noted earlier, the factors in section 14(2) cannot be used to rebut a presumed unjustified invasion of personal privacy under section 14(3).¹⁶ Therefore, I will next consider the application of section 14(4)(c) to the information at issue.

Section 14(4)(c): compassionate reasons

[52] As stated above, a presumption in section 14(3) can only be overcome if the personal information falls under section 14(4) of the *Act* or if there is a compelling public interest in the disclosure of the records that clearly outweighs the purpose of the section 14 exemption. The public interest override in section 16 has not been raised, and I find that it does not apply. As also stated above, personal information about an individual who has died can include information that also belongs to another individual. This means that section 14(4) contains provisions that allow for the disclosure of another individual's personal information in certain circumstances.

[53] Relevant to this appeal is the exception in section 14(4)(c). Section 14(4)(c) states that:

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

Discloses personal information about a deceased individual to the spouse or a close relative of the deceased individual, and the head is satisfied that, in the circumstances, the disclosure is desirable for compassionate reasons.

[54] In Orders MO-2237 and MO-2245, Commissioner Brian Beamish established that the application of section 14(4)(c) requires a consideration of three questions, each of

¹⁵ Orders P-242 and MO-2235.

¹⁶ *John Doe*, cited above.

which must be answered in the affirmative for the exception 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?

Parts 1 & 2 – do the records contain personal information and is the requester a close relative?

[55] With respect to the first two questions, I have found that the records contain the personal information of a deceased individual, and that the appellant is the deceased person's father, which places him within the definition of "close relative" in section 2(1) of the *Act*.¹⁷ Accordingly, the first two requirements for section 14(4)(c) to apply are met.

Part 3 – desirable for compassionate reasons

[56] Compassionate reasons have generally been found to exist where information will help a close relative with understanding the events leading up to and surrounding the death of an individual.¹⁸

[57] The appellant submits that he seeks access to information surrounding the circumstances of his son's death. He says that, because the affected parties were at the dwelling where his son was before he died, their statements may shed light on what happened in the preceding time.

[58] The police do not appear to dispute that disclosure of the two witness statements at issue would assist the appellant in understanding the circumstances of his son's death, saying only that they are bound by the mandatory exemption in section 14(1).

[59] The affected party did not submit any representations on the desirability of disclosure for compassionate reasons.

[60] In the circumstances of this appeal, I am satisfied that disclosure of severed portions of the witness statements that include the affected parties' personal information, including their accounts of the events leading up to the appellant's son's death is desirable for compassionate reasons. I have already noted above that the appellant does not seek access to the witnesses' names or addresses, and those will not be disclosed.

¹⁷ The definition of "close relative" in section 2(1) of the *Act* includes an individual's biological or adoptive parent.

¹⁸ Order MO-2245.

[61] In Orders MO-2237 and MO-2245, former Commissioner Brian Beamish made the following findings regarding the breadth of the compassionate reasons exception in section 14(4)(c):

...by using the words "in the circumstances" 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." [...] 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.

[62] Commissioner Beamish also stated in Order MO-2237 that, in order to determine whether disclosure of a deceased individual's personal information is "desirable for compassionate reasons," the overall circumstances must be considered and weighed.

[63] In Order MO-2515, Adjudicator Laurel Cropley ordered the disclosure of records relating to police involvement with a deceased individual in the weeks before the individual's death. Adjudicator Cropley was satisfied that the records, which contained information about a deceased's health and physical state, shed some light on that person's circumstances shortly before their death. In reaching this conclusion, the adjudicator adopted the approach set out in Order MO-2237, and weighed factors relevant to the issue of whether disclosure was desirable for compassionate reasons.¹⁹

[64] I accept and follow the reasoning of these orders in the appeal before me.

[65] In this appeal, the withheld information describes the hours before the appellant's son's death. I accept the police's position that this information is personal information that would ordinarily be protected under section 14(1), based on the application of the presumption in section 14(3)(b).

[66] As I have noted above, personal information about an individual who has died can include information that also belongs to another individual. I have no doubt that the appellant has questions about what happened that have impaired his ability to come to terms with the nature of his son's death.

[67] Regarding the privacy interests of the appellant's son and affected parties, I have considered the factors and presumptions in section 14(2) and (3) and the overall circumstances of this matter. I find that the records contain highly sensitive personal information about the appellant's son, including details of an intimate nature about his relationship, his personal state before he died, and his alleged comments and actions that the witnesses observed.²⁰ Even if all of the names are severed, comments in the records about what the witnesses saw and heard may render other people identifiable to the appellant.

¹⁹ Order MO-2515 at pages 8 and 9.

²⁰ See the factor at section 14(2)(f) (highly sensitive).

[68] However, based on my consideration of the circumstances before me, including the appellant's desire to have this information to gain a better understanding of his son's death, as well as the affected parties' right to privacy, I have given considerable weight to the fact that the appellant seeks this information to assist him with the grieving process. I have given the appellant's need for closure greater weight also because of the unusual circumstances of his son's death. Based on the information disclosed to the appellant already, the police concluded that the appellant's son died as a result of a self-inflicted knife wound, and that his death was not the result of a criminal act. The appellant, while not challenging the coroner's findings that his son was intoxicated before he died, maintains that his son had been "getting his life together" and had stopped drinking before he died. The appellant says that information already disclosed to him has given rise to questions about the nature of certain forensic evidence, including the lack of fingerprints on the knife, and the various locations of blood droplets. He also questions why no one called for help until his son was found in the road by a passerby.

[69] I accept that the appellant has outstanding questions about the circumstances surrounding his son's death, especially given its unusual nature. I therefore accept that the information he has received so far has not given him clarity regarding the circumstances leading up to his son's death, as discussed in Order MO-2237, and that he is seeking answers about a devastating loss. I find that disclosure of more information is desirable in the circumstances in an effort to give the appellant some closure.

[70] Having considered the records and the parties' representations, and having weighed the affected parties' privacy interests with the appellant's need to understand and come to terms with his son's death, I find that disclosure in the circumstances of this appeal is desirable for compassionate reasons. I am satisfied that the requirements for the application of section 14(4)(c) have been met, and I find that it applies to overcome the presumption against disclosure in section 14(3)(b).

[71] As a result, excepting names and addresses, I find that disclosure of the affected parties' personal information in the witness statements would not be an unjustified invasion of their personal privacy. I find that the same is true for the appellant's son's personal information, which I am ordering the police to disclose.

[72] Therefore, since section 14(4)(c) applies, section 14(1) does not preclude the police from disclosing this information to the appellant, I will order the police to disclose it, with the names and addresses of identifiable individuals severed.

Audio recordings

[73] However, I find that section 14(4)(c) does not apply to the audio recordings of the witness statements. Although the audio recordings were identified as records at issue, the parties did not address them in their representations. From my review of the audio recordings, they contain the appellant's son's personal information, but also the personal information of identifiable individuals (both recorded and named in the

recordings) which is, at times, unrelated to the appellant's son or to his death. In my view, given the conversational style of the recordings, this information, including the affected parties' comments that are unrelated to the appellant's son, is inextricably intertwined with the appellant's son's personal information and cannot reasonably be severed for disclosure.

[74] I have considered whether distorting the voices of the affected parties could address their privacy interests. However, I conclude that doing so would not be a sufficient or appropriate way to deal with the affected parties' privacy interests because their personal information in the recordings is also inextricably intertwined with the personal information of other identifiable individuals, whose names and personal information would then also need to be sufficiently severed to address any privacy concerns relating to the affected parties in releasing this information. Given the highly sensitive nature of the affected parties' personal information, some of which appears to be unrelated to the appellant's son's death, I find that their privacy interests outweigh the compassionate reasons for disclosing the information. I find this is especially so given the disclosure that will be provided by the accompanying written statements, which contain a summary of their statements about the circumstances surrounding the appellant's son's death.

Conclusion

[75] I have considered all of the circumstances of this matter, including the appellant's desire to know what happened to his son, as well as his son's and the affected parties' privacy interests. In my view, this is a situation where the appellant's interests must prevail. I am mindful that providing the appellant with the witness statements, even with names and contact information severed (except for the appellant's son's name), necessarily entails providing the appellant with his son's personal information and information about other individuals that may render them identifiable to the appellant. Although these parties' privacy interests cannot be discounted, in my view they are outweighed in the circumstances by the compassionate reasons for disclosure, namely, allowing the appellant to have a better understanding of the circumstances of his son's death and a measure of closure.

[76] For the reasons set out above, I find that disclosure of a severed version of the records, including the appellant's son's name but with the names and addresses of the witnesses and affected parties removed, is desirable for compassionate reasons. Therefore, section 14(4)(c) applies to the records. As a result, the personal privacy exemption in section 14(1) does not.

[77] I will therefore order the police to disclose a severed version of the records to the appellant. I will order the police to sever from the records those portions containing the witnesses' names and addresses (which the appellant has stated he is not seeking), and the names of other individuals except for the appellant's son.

ORDER:

1. I order the police to disclose to the appellant a severed version of the records bearing page numbers 8 – 12, inclusive, in accordance with the copy of the records being provided with the police's copy of this order. The police shall disclose these records by **May 9, 2022** but not before **May 4, 2022**.
2. In order to verify compliance with this order, I reserve the right to require the police to provide me with a copy of the records disclosed to the appellant.

Original Signed By: _____
Jessica Kowalski
Adjudicator

_____ March 31, 2022