

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4425

Appeal MA22-00264

Brantford Police Services Board

August 23, 2023

Summary: The appellant made a request to the Brantford Police Services Board (the police) for access to records, including records relating to an incident in which the police responded to his son's death by suicide. The police granted partial access to the requested information. The appellant appealed the police's decision, advising that he continues to seek access to the portion of his son's suicide note (the note) that the police withheld under the mandatory personal privacy exemption at section 14(1) of the *Act*. In this order, the adjudicator finds that the mandatory exemption at section 14(1) applies to the information for which it was claimed. In so finding, she considers and dismisses the possible application of the exception in section 14(4)(c), which requires disclosure of personal information if, in the circumstances, disclosure is considered desirable for compassionate reasons. She upholds the police's decision not to disclose the portions of the note that remain at issue and dismisses the appeal.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2(1) (definition of personal information), 14(1), 14(2)(f), 14(3)(b) and 14(4)(c).

OVERVIEW:

[1] This appeal addresses a father's right of access to a portion of his adult son's suicide note that was not disclosed to him. The portion of the note that was withheld contains the personal information of another identifiable individual who does not consent to the disclosure of their information.

[2] The Brantford Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for records regarding three specified incident numbers.

[3] The police issued a decision granting the requester partial access to the responsive records. The police denied access to certain information pursuant to the exemption at sections 8(1) (law enforcement) and the personal privacy exemptions at sections 14(1) (mandatory) and 38(b) (discretionary) of the *Act*.

[4] The requester, now the appellant, appealed the police's decision to the Information and Privacy Commissioner of Ontario (the IPC). A mediator was assigned to attempt to facilitate a mediated resolution between the parties.

[5] During mediation, the appellant advised that the only record that he continues to seek access to is the portion of his son's suicide note (the note) that was withheld. The appellant argues that he is entitled to know what was troubling his son at the time of his death. The appellant confirmed that he is not pursuing access to any of the other information or records that were withheld; those records are not at issue in this appeal.

[6] The police advised that while they considered the possible application of the compassionate grounds provision in section 14(4)(c) of the *Act* in making their decision, they decided not to disclose the portion of the note that remains at issue, under section 14(1) of the *Act*. Section 14(1) is the only exemption at issue in this appeal.

[7] As a mediated resolution could not be reached, the appeal was moved to the adjudication stage of the appeal process. As adjudicator, I decided to conduct an inquiry.

[8] I sought and received representations from the police and the appellant which were shared between them in accordance with the IPC's *Practice Direction 7*.

[9] I also notified an individual who was identified as having an interest in the disclosure of the information at issue in the note (the affected party) and invited them to submit representations. The affected party made brief representations, advising that they did not consent to the disclosure of their information to the appellant. This was communicated to the appellant but the representations were not shared due to confidentiality concerns.

[10] In this order, I find that the mandatory exemption at section 14(1) of the *Act* applies to exempt the information in the note that remains at issue. I uphold the police's decision not to disclose it and dismiss the appeal.

RECORD:

[11] The information that remains at issue in this appeal is a portion of a suicide note

(the note). The first sentence of the note was disclosed to the appellant.

ISSUES:

- A. Does the record contain personal information as defined in section 2(1) and, if so, to whom does it relate?
- B. Does the mandatory personal privacy exemption at section 14(1) apply to the information at issue?

DISCUSSION:

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

[12] What must be determined in this appeal is whether the portion of the note that was withheld by the police is exempt from disclosure under the mandatory personal privacy exemption at section 14(1) of the *Act*.

[13] In order to decide whether the mandatory personal privacy exemption at section 14(1) of the *Act* applies in a specific case, the IPC must first decide whether the record contains "personal information," and if so, to whom the personal information relates.

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

[15] 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.¹

[16] Section 2(1) of the *Act* gives a list of examples of personal information. The paragraph that is particularly relevant in the circumstances of this appeal is:

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

(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.

[17] The other listed examples of personal information under section 2(1) are not relevant in this appeal. Additionally, the list of examples of personal information under

¹ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

section 2(1) is not a complete list. This means that other kinds of information could also be "personal information."²

[18] It is important to know whose personal information is in the record. If the record contains the requester's own personal information, their access rights are greater than if it does not.³ Also, if the record contains the personal information of other individuals, one of the personal privacy exemptions might apply.⁴

[19] The police submit that the note contains the personal information of the appellant's adult son (the deceased) and two other identifiable individuals, one of whom is the affected party. They submit that because the two other individuals are referred to by name in the note they would be identifiable if the withheld information was released. The police submit that they rely on paragraph (h) of the definition of personal information set out in section 2(1) of the *Act* because the other individuals' names appear with other personal information relating to them.

[20] They also submit that severing the individuals' personal information would be difficult as throughout the note, it is integrated with other information, including the personal information of the deceased.

[21] The police submit that the note was not addressed to the appellant and it does not contain the appellant's own personal information.

[22] The appellant does not dispute that the note does not contain his own personal information. He submits that as the deceased's father he has the right to know what precipitated his son's decision to end his own life.

[23] From my review of the note, I find that it contains the personal information of the deceased, and two other identifiable individuals, including the affected party who I notified of this appeal. I find the personal information of both individuals falls within paragraph (h) of the definition of personal information section 2(1) of the *Act* as their names appear in the note, together with other personal information about them. Additionally, from my review of the note, the personal information of the deceased is so intertwined with the content of the note and the other individuals' personal information that it is not reasonably severable.

[24] I also find that the note does not contain the appellant's personal information. As a result, I must determine whether the information remaining at issue in the note is exempt from disclosure under the mandatory personal privacy exemption at section 14(1) of the *Act*.

² Order 11.

³ 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.

⁴ See sections 14(1) and 38(b).

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

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

[26] 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.

[27] 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. In my view, none of the exceptions in sections 14(1)(a) to (e) are relevant in this appeal.

[28] The section 14(1)(f) exception is more complicated. 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." Sections 14(2), (3) and (4) help in deciding whether disclosure would or would not be an unjustified invasion of personal privacy.

Sections 14(3)(a) to (h) outline several situations in which disclosing personal information is presumed to be an unjustified invasion of personal privacy. These sections are generally be considered first.⁵ However, if no factors favouring disclosure are present, the section 14(1) exemption — the general rule that personal information should not be disclosed — applies because the exception in section 14(1)(f) has not been proven.⁶

[29] The police submit that the personal information at issue is a presumed unjustified invasion of personal privacy under section 14(3)(b). The appellant does not address any of the presumptions in section 14(3), nor the factors in section 14(2).

[30] In these circumstances, because there are no relevant factors that favour disclosure, either argued by the appellant or apparent from the information itself, it is not necessary to address the police's arguments about the section 14(3)(b) presumption. With no factors favouring disclosure, it cannot be said that disclosure would not constitute an unjustified invasion of personal privacy within the meaning of section 14(1)(f). In other words, the information at issue is exempt from disclosure under section 14(1).

⁵ 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.

⁶ Orders PO-2267 and PO-2733.

Section 14(4)

However, if any of the paragraphs in section 14(4) of the *Act* apply, disclosure of personal information is not an unjustified invasion of personal privacy within the meaning of section 14(1)(f).

[31] The circumstances indicate that the reason contemplated in 14(4)(c) might apply to establish that disclosure of the personal information at issue in the note would *not* be an "unjustified invasion of personal privacy."⁷

[32] Section 14(4)(c) states:

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.

[33] This section provides for the disclosure of the personal information of a deceased individual, if disclosure to a "close relative" would be desirable for compassionate reasons.

[34] The terms "close relative" and "spouse" 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.

[35] In order for section 14(4)(c) to apply, all of the following conditions must apply:

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.⁸

[36] When considering whether section 14(4)(c) applies, an institution (when responding to a request) or the IPC (on appeal) must determine whether, "in the circumstances, disclosure is desirable for compassionate reasons," taking into account

⁷ None of the other reasons set out in section 14(4) have been claimed, nor are they relevant in this appeal.

⁸ Orders MO-2237 and MO-2245.

factors such as the need to assist the requester in the grieving process.⁹ 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."¹⁰

[37] Personal information about a deceased individual can include information that also belongs to another individual. The factors in section 14(2) 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.¹¹

[38] The police submit that in deciding not to disclose the portions of the note that remain at issue it considered the possible application of section 14(4)(c) but ultimately decided that it did not apply.

Conditions one and two: personal information of the deceased and "close relative"

[39] The police concede that the first two conditions for section 14(4)(c) to apply are met: the note contains the personal information of someone who has died and the appellant, as the deceased's father, is a "close relative." I agree and find that the first two conditions of the test have been established.

Condition three: disclosure is desirable for compassionate reasons

[40] The police submit that although the circumstances of the request raise the possibility that disclosure of the information remaining at issue in the note is desirable for compassionate reasons, *in the circumstances*, disclosure is *not* desirable for compassionate reasons. For the following reasons, I agree.

[41] The police acknowledge, and I agree, that the circumstances surrounding the death of the appellant's son are tragic and from the appellant's representations, it is clear that he has experienced deep personal loss. The police also acknowledge and I agree, that because it is clear that the appellant is struggling to come to terms with his son's death and wishes to determine more information about his son's state of mind at the time of his death disclosure of the information relating to his son's death may be considered desirable for compassionate reasons. However, the police submit that having considered other relevant factors weighing against disclosure, including the privacy interests of the two identifiable individuals whose personal information is contained in the note, they concluded that the existing compassionate reasons were outweighed.

⁹ Order MO-2245.

¹⁰ Order MO-2245.

¹¹ Order MO-2237.

[42] Specifically, the police submit that they considered the following factors:

- the personal information in the note clearly relates to other identifiable individuals, primarily that of the affected party, and does not contain any personal information belonging to the appellant;
- the affected party, whose personal information is contained in the note, did not provide consent to the disclosure of their information;
- that it was not possible to disclose any additional information to the appellant without impacting the privacy of the other identifiable individuals, including the affected party and, in the circumstances, it deemed that such disclosure would constitute an unjustified invasion of their personal privacy that was not outweighed by section 14(4)(c).

[43] I agree with the police and find that, despite the appellant's argument that disclosure of the information at issue contained in the note to him is desirable for compassionate reasons, due to the existence of a number of relevant factors weighing against disclosure, in the circumstances, the withheld information should not be disclosed under section 14(4)(c).

[44] Specifically, I find that the privacy interests of the individuals named in the note, in particular the affected party, outweigh the appellant's interest, on compassionate grounds, to access the information in the note relating to his son's death.

[45] Above, I noted that when personal information about an individual who has died includes information that belongs to another individual the factors in section 14(2) can be helpful in determining whether the personal information belonging to the other individual should be disclosed for compassionate reasons. Considering those factors, I note that section 14(2)(f), weighing against disclosure, is particularly relevant. This section was addressed by the police in their representations. The appellant does not specifically address this factor or any of the other factors listed in section 14(2).¹²

[46] Section 14(2)(f) applies if the information at issue is highly sensitive.¹³ To be considered "highly sensitive," there must be a reasonable expectation of significant personal distress if the information is disclosed.¹⁴

[47] The police submit that section 14(2)(f) is relevant because there is a reasonable expectation that the affected parties would experience personal distress if the information is disclosed to the appellant, without their consent. The affected party also

¹² Neither of the parties have claimed, and I have insufficient evidence to conclude, that any of the other factors in section 14(2), weighing either for or against disclosure, are relevant in this appeal.

¹³ Section 14(2)(f) reads: A head, in determining whether disclosure of personal information constitutes and unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether, the personal information is highly sensitive.

¹⁴ Orders PO-2518, PO-2617, MO-2262 and MO-2344.

conveyed that they would experience significant personal distress if the information is disclosed.

[48] In light of the submissions of the police and the affected party and having reviewed the content of the information in the note that remains at issue, I accept that it is information that all parties (the deceased, the affected party and the other identifiable individual named in the note) would consider to be highly sensitive. I accept that there is a reasonable expectation that all three of these parties would experience significant personal distress if the information is disclosed. Therefore, I find that section 14(2)(f) is a relevant factor to consider in the disclosure of the relevant portions of the note and it carries significant weight.

[49] As noted above, although the factors in section 14(2) may provide some help in deciding whether the personal information belonging to another individual should be disclosed for compassionate reasons, in deciding whether the disclosure of information under section 14(4)(c) would interfere with that another individual's right to privacy, the overall circumstances must be considered.¹⁵

[50] In addition to the factor in section 14(2)(f), which weighs against disclosure, I give significant weight to the fact that the affected party has explicitly refused to provide consent to disclose their personal information to the appellant. Additionally, as previously mentioned, the note contains the personal information of the deceased, the affected party and another identifiable individual and this information is intertwined to such an extent that it cannot be severed.

[51] In my view, the intrusion on the personal privacy of the other individuals whose personal information is contained in the note (in particular that of the affected party), in order to provide the appellant with information about his son's state of mind at the time of his death, is not justified. Taking into account the overall circumstances, I find that it is not desirable in the circumstances to disclose the information in the note that has not already been disclosed, for compassionate reasons.

[52] For these reasons, I accept the police's position that the third component of the test for section 14(4)(c) has not been established.

[53] Consequently, I find that disclosure of the information remaining at issue in the note would constitute an unjustified invasion of personal privacy of other identifiable individuals and that it is exempt from disclosure under section 14(1).

ORDER:

I uphold the police's decision not to disclose the information at issue and dismiss the appeal.

¹⁵ Order MO-2237.

Original Signed by: _____
Catherine Corban
Adjudicator

_____ August 23, 2023