

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4531

Appeal MA21-00303

Waterloo Regional Police Services Board

June 12, 2024

Summary: The Waterloo Regional Police Services Board (the police) received a request under the *Act* for all records relating to the death of the requester's son. The police granted partial access to records, but withheld portions under the personal privacy exemptions in sections 14(1) and 38(b) of the *Act*. The police disclosed some information in the records for compassionate reasons pursuant to section 14(4)(c) of the *Act*.

In this order, the adjudicator upholds the police's decision to withhold information under sections 14(1) and 38(b).

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"), 14, and 38(b).

Orders and Investigation Reports Considered: MO-2245, MO-2318, P-242, PO-3129, and PO-3900.

OVERVIEW:

[1] The Waterloo Regional Police Services Board (the police) received an access request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) from the mother of a deceased man. The appellant sought access to all police records relating to her son's death, including the deceased's cell phone records, all witness statements, and "transcriptions" of the police's investigation.

[2] The police located records responsive to the request, including an occurrence report, police officers' handwritten notes, and cell phone extraction reports. Some of the police officers' notes also included printed electronic records, such as emails, text messages, and direct messages.

[3] The police granted the appellant partial access to the records, relying on the discretionary personal privacy exemption in section 38(b) and the mandatory personal privacy exemption in section 14(1).¹ The police disclosed some information in the records for compassionate reasons pursuant to section 14(4)(c). Finally, the police withheld information in the records that was not responsive to the request.

[4] The appellant appealed the police's decision to the Information and Privacy Commissioner of Ontario (the IPC). The IPC attempted mediation of the appeal. During mediation, the appellant confirmed that she wished to pursue access to all of the withheld information in the responsive records, except for the information withheld as non-responsive. As a result, a number of pages of the records were removed from the appeal.

[5] The appeal was moved to the adjudication stage of the appeal process in which an adjudicator may conduct an inquiry. The adjudicator sought and received representations from both parties, which were shared in accordance with the IPC's *Code of Procedure*.

[6] The appeal was then transferred to me to complete the inquiry and issue an order. I reviewed the parties' representations and determined that I did not need to hear from them further before making my decision.

[7] In the discussion that follows, I uphold the police's decision to withhold portions of the records under sections 14(1) and 38(b) of the *Act* and dismiss the appeal.

RECORDS:

[8] There are 127 pages of records at issue in this appeal consisting of an occurrence report, several sets of police officers' handwritten notes, and cell phone extraction reports. In some cases, the handwritten notes contain other types of documents that have been printed and pasted-in, such as event details, text messages, and direct messages. The police have provided an index of records, listing the page numbers, the access granted, and the exemptions claimed, but these groupings do not usefully separate these on a record-by-record basis.

[9] As former Commissioner Brian Beamish stated in PO-3129, the correct approach is to review the entire record, not only those portions remaining at issue, to determine

¹ In their representations, the police also claimed the law enforcement exemption at section 38(a), read with section 8(1)(d), applies to some of the records. It is not necessary for me to consider this exemption claim, given my findings regarding sections 14(1) and 38(b).

whether it contains the requester's personal information. This record-by-record analysis is significant because it determines whether the record as a whole (rather than only certain portions of it) must be reviewed under Part I or Part II of the *Act*.² Given this, I have reorganized the records, such that each record is composed of a single report or set of officer's notes. Fully disclosed records or records where the only information withheld is non-responsive to the request (and which are therefore not at issue³) have not been included.

[10] For ease of reference, I have identified the records as follows:

Record Number	Pages	Pages remaining at issue	Description
1	1-25	All	Occurrence details report
2	26-27	27	Officer's notes
3	28-33	29, 31	Officer's notes
4	34-36	All	Officer's notes
5	39-41	All	Officer's notes
6	42-44	43	Officer's notes
7	45-49	46, 48, 49	Officer's notes
8	50-142	49-58, 60-68, 70-87, 95, 97-103, 106, 108, 116-121, 124, 125, 129-139, 141	Officer's notes
9	155-162	All	Cell phone extraction report
10	169	169	Cell phone extraction report
11	170-182	All	Cell phone extraction report

ISSUES:

- A. Do the records contain personal information as defined in section 2(1) and, if so, whose personal information is it?

² Order M-352.

³ As noted, the appellant stated that she was not pursuing access to information withheld on the basis that it was not responsive to the request.

- B. Does the mandatory personal privacy exemption at section 14(1) or the discretionary personal privacy exemption at section 38(b) apply to the records at issue?
- C. Did the police exercise its discretion under section 38(b)? If so, should this office uphold the exercise of discretion?

DISCUSSION:

Issue A: Do the records contain personal information as defined in section 2(1) and, if so, whose personal information is it?

[11] The police rely on the mandatory personal privacy exemption at 14(1) and the discretionary personal privacy exemption at 38(b) of the *Act* to withhold the information at issue. Before I consider whether these exemptions apply, I must first determine whether the records at issue contain "personal information." If a record does, I must determine whether the personal information belongs to the appellant, other identifiable individuals, or both. "Personal information" is defined in section 2(1) of the *Act* as "recorded information about an identifiable individual."

[12] Information is "about" the individual when it refers to them in their personal capacity, revealing something of a personal nature about the individual. 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.⁴ Section 2(1) of the *Act* gives a list of examples of personal information.

[13] The police state that the records contain the personal information of affected parties, including their names, dates of birth, addresses, phone numbers, and personal statements, as well as private text messages and photos of several affected parties. The police acknowledge that the records contain the appellant's personal information, as well. They also note that some information may relate to some individuals in a professional capacity, stating that most of this type of information was released to the appellant.

[14] The police state that they disclosed personal information relating to the appellant's deceased son to the appellant for compassionate reasons, pursuant to section 14(4)(c) of the *Act*⁵. They also disclosed information relating to the appellant's daughter, who provided her consent for them to do so.

[15] The appellant's representations did not address whether the records at issue

⁴ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

⁵ Section 14(4) of the *Act* states that "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."

include personal information.

[16] I have reviewed the records at issue and find that all of them include the personal information of the appellant's son. Some of the records also include personal information of the appellant, her daughter, and other individuals.

[17] In my review of the records at issue, I find that the records contain the following types of personal information⁶:

- The occurrence report contains the personal information of the appellant's son, and other identifiable individuals. The withheld portions include witnesses' names, telephone numbers, addresses, and ages, as well as their interviews and other information relating to their interactions with the police. In addition, the police withheld personal information relating to the coroner, other than his name.
- Most of the officers' notes contain witnesses' names, contact information, and statements about the events from the time of the incident.
- The officer's notes in record 9 include information relating to the appellant, her son, and other individuals. The withheld portions of these notes include names, addresses, contact information, and dates of birth of witnesses, as well as witness statements and police observations regarding these witnesses. The police also withheld screenshots of an event report, direct messages, and text messages, which were pasted into these notes.
- The cell phone extraction reports include telephone numbers and names. These include personal information of the appellant's son and other identifiable individuals, including the appellant's information, which appears in one report. The

⁶ The definition of "personal information" is found in s. 2(1) of the *Act*, and reads as follows:
"personal information" means recorded information about an identifiable individual, including,
(a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
(b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
(c) any identifying number, symbol or other particular assigned to the individual,
(d) the address, telephone number, fingerprints or blood type of the individual,
(e) the personal opinions or views of the individual except if they relate to another individual,
(f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
(g) the views or opinions of another individual about the individual, and
(h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

police withheld names and telephone numbers of affected parties from these records.

[18] With regard to the appellant's personal information, previous orders have established that where a record contains both the personal information of the requester and another individual, the request falls under Part II of the *Act* and the relevant personal privacy exemption is the exemption at section 38(b).⁷ Some exemptions, including the personal privacy exemption, are mandatory under Part I (section 14(1)) but discretionary under Part II (section 38(b)), and thus in the latter case an institution may disclose information that it would not disclose if Part I is applied.⁸

[19] Of the records at issue, I find that records 1, 8, and 11 include the appellant's personal information. Accordingly, for the severed portions of those records, I will consider the application of the discretionary personal privacy exemption in sections 38(b) found in Part II of the *Act*.

[20] For the remaining records, which I find contain the personal information of the appellant's son and other identifiable individuals, I will review the application of the mandatory personal privacy exemption in section 14(1) to these records.

Issue B: Does the mandatory personal privacy exemption at section 14(1) or the discretionary personal privacy exemption at section 38(b) apply to the records at issue?

[21] Section 36(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 38 provides a number of exemptions from this right.

[22] Under section 38(b), where a record contains personal information of both the appellant and another individual, and disclosure of the information would be an "unjustified invasion" of the other individual's personal privacy, the institution may refuse to disclose that information to the requester. Since the section 38(b) exemption is discretionary, the institution may also decide to disclose the information to the appellant. Section 38(b) reads:

A head may refuse to disclose to the individual to whom the information relates personal information ... if the disclosure would constitute an unjustified invasion of another individual's personal privacy.

[23] In contrast, under section 14(1), where a record contains personal information of another individual but not the requester, the institution is prohibited from disclosing that information unless one of the exceptions in sections 14(1)(a) to (e) applies, or unless

⁷ Order M-352.

⁸ Orders MO-1757-I and MO-2237.

disclosure would not be an unjustified invasion of personal privacy under section 14(1)(f).

[24] In both section 38(b) and section 14 situations, sections 14(2), (3) and (4) of the *Act* provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the individual's personal privacy. Section 14(2) provides some criteria for the police to consider in making this determination, section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy, and section 14(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

[25] The police state that they have disclosed personal information belonging to the appellant, her daughter (who consented to the disclosure), and her deceased son, pursuant to section 14(4)(c) of the *Act*. They state that the remaining withheld personal information is related to other individuals and was obtained from them during the investigation, such that the police state there was an expectation of confidentiality regarding the information provided. In the view of the police, disclosing this information would be an unjustified invasion of the affected parties' personal privacy.

[26] The police also noted that the deceased and witnesses were found in circumstances that could damage their reputation, and that some information provided about the deceased was highly sensitive and could cause distress if disclosed.

[27] The appellant states that as her son is deceased, any concern for his reputation is no longer relevant. She also rejects any concerns for her personal distress, stating that the deceased's family has a right to know what happened to him.

[28] The appellant also raised concerns about the police investigation of her son's death. She states that she should be provided with all details regarding his passing, as she would like the case to be reopened and "properly investigated". She provided additional details as to why she believes the investigation to be inadequate.

Analysis and findings

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

[29] The police state that the section 14(3)(b) presumption applies to the withheld information in this case. They note that personal information was compiled as part of an investigation into an overdose and sudden death. The investigation included collecting and processing evidence, interviewing witnesses, and writing a report summarizing the investigation. The police acknowledge that no charges were laid but rely on Order P-242 for their position that the section 14(3)(b) presumption only requires an investigation into a possible violation of law. The appellant does not dispute that the records relate to a police investigation.

[30] Section 14(3)(b) states that "[a] disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information ... was

compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation.”

[31] As the police point out, the section 14(3)(b) presumption can apply even if no criminal proceedings were commenced. It only requires that there be an investigation into a possible violation of law.⁹

[32] I have reviewed the records at issue and find that the presumption at section 14(3)(b) applies to all the records at issue. The occurrence report, officers’ notes, and cell phone extraction reports were all created as part of the investigation into the circumstances surrounding the death of the appellant’s son. I find that all personal information in those records was compiled as part of the police investigation into a possible violation of law and that the presumption in section 14(3)(b) applies.

Initial Conclusion - Records 2-7, 9, and 10

[33] For records that do not contain the appellant’s own personal information, the appropriate personal privacy exemption is the mandatory exemption found in section 14(1). Under that section, the section 14(3)(b) presumption can only be rebutted by the circumstances set out in section 14(4), and not by the factors in section 14(2).

[34] I find that section 14(1) applies to records 2-7, 9, and 10, as these records do not contain the appellant’s personal information. Disclosure of these records are presumed to constitute an unjustified invasion of personal privacy as these records were compiled and are identifiable as part of an investigation into a possible violation of law, pursuant to section 14(3)(b). I will not consider the factors in section 14(2), as those factors cannot rebut the section 14(3)(b) presumption.

[35] However, section 14(4)(c) allows for disclosure of an individual’s personal information to a close relative for compassionate reasons, and this section has been raised in this case. I will address the application of that section below but, pending my analysis on the possible application of section 14(4)(c), I find that the withheld information in records 2-7, 9, and 10 are exempt under section 14(1) of the *Act*.

Section 14(2) Factors - Records 1, 8, and 11

[36] As noted, I have found that all records are subject to the presumption that their disclosure would constitute an unjustified invasion of personal privacy, based on section 14(3)(b). However, records 1, 8, and 11, unlike the other records at issue, also contain the appellant’s personal information.

[37] For records containing the requester’s own personal information and which the police claim to be exempt under section 38(b), this office will consider and weigh the

⁹ Orders P-242 and MO-2235.

factors and presumptions in sections 14(2) and (3), to balance the interests of the parties in determining whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy. Having already addressed the section 14(3)(b) presumption (which for the reasons set out above, I have found also applies to records 1, 8, and 11), I will now consider the application of the factors listed in section 14(2) and whether there are any factors weighing for or against disclosure.

[38] 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.¹⁰ Some of the factors listed in section 14(2), if present, weigh in favour of disclosure, while others weigh in favour of non-disclosure. The list of factors under section 14(2) is not exhaustive. The institution must also consider any circumstances that are relevant, even if they are not listed under section 14(2).¹¹

[39] The appellant did not cite any specific subsections of 14(2) that would weigh in favour of disclosure. The police expressly raised the application of factors 14(2)(e), (f), (h), and (i), factors which, if present, weigh against disclosure. These sections state:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

...

(e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;

(f) the personal information is highly sensitive;

...

(h) the personal information has been supplied by the individual to whom the information relates in confidence; and

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

Section 14(2)(e) (pecuniary or other harm)

[40] The police state that the appellant has made "strong assertions regarding her views and opinions related to the death of her son and possible wrong doings". From this, the police deduced that the relationship between the appellant and witnesses may be very bad, leading them to withhold personal information on that basis.

¹⁰ Order P-239.

¹¹ Order P-99.

[41] For section 14(2)(e) to apply, the evidence must demonstrate that the damage or harm with disclosure that is envisioned by the clause be present or foreseeable, and that this damage or harm would be "unfair" to the individual involved.

[42] In Order MO-2318, former Commissioner Brian Beamish provided guidance on "unfair harm" as contemplated by section 14(2)(e). He stated:

Turning to the factor at section 14(2)(e), this office has held that although the disclosure of personal information may be uncomfortable for those involved in an already acrimonious matter, this does not mean that harm would result within the meaning of this section, or that any resulting harm would be unfair [Order PO-2230]. However, it has also been held that the unfair harm contemplated by section 14(2)(e) is foreseeable where disclosure of personal information is likely to expose individuals to unwanted contact with the requester [Order M-1147], or where such disclosure could expose the individuals concerned to repercussions as a result of their involvement in an investigation by the institution [Order PO-1659].

[43] I agree with the analysis set out by former Commissioner Beamish and adopt it for the purposes of this appeal. Based on the police's representations, I find that the unfair harm contemplated by section 14(2)(e) is foreseeable. Records 1 and 8 contain witness statements regarding the events surrounding the death of the appellant's son. These two records also include later communications between those same individuals and police, as well as police communications with other identifiable individuals. The withheld information in all three of records 1, 8, and 11 also includes the names and contact details of identifiable individuals. I accept that disclosure of both the communications between the police and identifiable individuals and the names and contact information of identifiable individuals could foreseeably expose these individuals to repercussions resulting from their involvement in this investigation. I find that the section 14(2)(e) factor applies to weigh against disclosure of the withheld personal information in records 1, 8, and 11.

Section 14(2)(f) (highly sensitive)

[44] The police state that the withheld information includes personal details provided by the affected parties about the deceased, which could cause personal distress if disclosed.

[45] To be considered highly sensitive, there must be a reasonable expectation of significant personal distress if the information is disclosed.¹²

[46] The witness statements found in records 1 and 8 include a significant amount of personal information belonging to identifiable individuals. These are not limited to the

¹² Orders PO-2518, PO-2617, MO-2262 and MO-2344.

events of the night at issue, but also relate to information from other times and contain information that is extremely personal to those individuals. In addition, these records document police interactions with other individuals not present at the time of the death of the appellant's son. I accept that if the information in these various statements and interactions were to be disclosed, there is a reasonable expectation that the individuals affected would suffer significant personal distress.

[47] The personal information in record 11 includes the names and contact information of identifiable individuals. When viewed in the context of the information that the appellant has already been provided with, I find that disclosure of this personal information could also be reasonably expected to cause significant personal distress to the individual(s) to whom the information relates.

[48] I find that the section 14(2)(f) factor applies to the records at issue and weighs against disclosure of the withheld personal information in records 1, 8, and 11.

Section 14(2)(h) (the personal information has been supplied in confidence)

[49] The police state that "[when] victims, witnesses, and individuals under investigation provide information to police, there is an expectation that police will maintain confidentiality." They note that otherwise, individuals would be wary of providing information to the police. The police note that in this case, "whether it was explicit or not, the attending officer would have made assurances of confidentiality to the [individuals providing statements] when the report was being made."

[50] This factor applies if both the individuals supplying the information and the recipient had an expectation that the information would be treated confidentially, and that expectation is reasonable in the circumstances. Thus, section 14(2)(h) requires an objective assessment of the reasonableness of any confidentiality expectation.¹³

[51] Having reviewed the statements of various individuals in records 1 and 8, I agree that these were provided to police with a reasonable expectation that these remain in confidence, regardless of whether the police explicitly told them so. I find that this factor weighs against disclosure of this information present in records 1 and 8. It does not apply to record 11, as a cell phone extraction report does not include information of this nature.

Section 14(2)(i) (unfair damage to reputation)

[52] The police state that the deceased and other individuals were found in circumstances that could damage their reputation, such that section 14(2)(i) is a factor against disclosing personal information. The appellant asserts that reputational damage to her son is not relevant, given that he is deceased.

[53] Section 14(2)(i) weighs against disclosure if disclosure of personal information

¹³ Order PO-1670.

might create damage or harm to an individual's reputation that would be considered "unfair" to the individual.¹⁴

[54] The police have not addressed why any reputational damage would be "unfair." Without further evidence on this point, I find this factor bears no weight for or against disclosure of any of the withheld personal information.

Initial Conclusion – Records 1, 8, and 11

[55] Records 1, 8, and 11 contain the appellant's personal information, as well as that of her son and other identifiable individuals. The appellant has been provided with her own personal information, as well as that of her son and her daughter, who consented to her personal information being provided. The remaining information includes her son's personal information mixed with that of other identifiable parties, largely witnesses. Of the factors raised, I have found that these either carry no weight in determining disclosure or weigh against disclosure.

[56] I still must consider the application of section 14(4) to the circumstances at hand, as disclosure does not constitute an unjustified invasion of personal privacy if section 14(4) applies. However, I find that there are no 14(2) factors favouring disclosure that would outweigh considerations favouring privacy protection under the *Act*, and that pending my analysis on the possible application of section 14(4)(c), the withheld information in records 1, 8, and 11 is exempt under section 38(b).

Does the compassionate reasons exception at section 14(4)(c) apply?

[57] The appellant states that she should be allowed access to all details surrounding her son's passing, as she would like the case to be reopened and reinvestigated. She believes that the nature of her son's passing was suspicious and that having this information would allow her to have the case escalated. She provided examples of what she believes to be inadequate investigation by the police. From this, it appears that she is stating that the compassionate reasons exception should apply to all withheld information in the records.

[58] The police state that they have applied the section 14(4)(c) exception to disclose the personal information belonging solely to the deceased, and that the exception does not apply to the remaining withheld information.

[59] 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

¹⁴ Order P-256.

individual, and the head is satisfied that, in the circumstances, the disclosure is desirable for compassionate reasons.

[60] For section 14(4)(c) to apply, the answer must be “yes” to all three of the following questions:

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 desirable for compassionate reasons, in the circumstances of the request?

[61] Personal information about a deceased individual can include information that also qualifies as the personal information of another individual. Where this is the case, the “circumstances” to be considered under the third part of the test would include the fact that the personal information of the deceased is also the personal information of another individual or individuals. The factors and circumstances referred to in section 14(2) may provide assistance in this regard, but the overall circumstances must be considered and weighed in any application of section 14(4)(c).¹⁵

[62] In addition, the IPC has held that close relatives of a deceased individual, and not the institution, are in the best position to determine what information they want to seek out to assist them in the grieving process. As noted by former Commissioner Beamish in Order MO-2245, section 14(4)(c) was “designed to allow families to have the records that they feel they require in order to grieve in the way that they choose.” The task of the institution in applying section 14(4)(c) is to determine whether, “in the circumstances, disclosure is desirable for compassionate reasons.”¹⁶

[63] Following this, subsequent IPC orders have consistently adopted a broad and all-encompassing approach in determining whether or not disclosure is “desirable for compassionate purposes.”¹⁷

[64] Taking all of that into account, I now turn to the three-part test.

Part 1: personal information of the deceased

[65] The police have granted the appellant access to all personal information that relates solely to the deceased. The information that remains at issue is the personal information of the deceased that is inextricably intertwined with the personal information of other identifiable individuals. I find that the first requirement for section 14(4)(c) is satisfied.

¹⁵ Order MO-2237.

¹⁶ Order MO-2245.

¹⁷ See, for example, Orders PO-3273, PO-3951, and MO-4327.

Part 2: spouse or "close relative"

[66] Under section 2(1) of the *Act*, "close relative" includes parents of an individual. In this case, the appellant is the mother of the deceased, and is therefore a "close relative". I find that the second requirement for the application of section 14(4)(c) is satisfied.

Part 3: desirable for compassionate reasons

[67] In this case, the appellant seeks additional information to assist in having the investigation into her son's death reopened. The police state that they have released the deceased's personal information to the appellant for compassionate reasons, noting that the appellant "expressed a sympathetic and compelling need to receive the information." The police state that they withheld the remaining information because it is also the information of other identifiable individuals and highly sensitive in nature. The police state that they are protecting the privacy of the other individuals in doing so.

[68] The appellant's motivation in seeking additional information is similar to that of the appellant in Order PO-3900. In that case, additional disclosure was sought by an appellant to challenge a police force's conclusion regarding the cause of her brother's death. In that case, the adjudicator adopted the approach of previous IPC orders, accepting the appellant's judgment on what she required for closure regarding her brother's death. However, the remaining information was inextricably intertwined with that of other identifiable individuals and the information already available to the appellant "[provided] her with an understanding of the events leading up to and surrounding the death of [her] brother and of the investigation that ensued". The adjudicator found that the appellant did not establish that disclosure of the *specific* information remaining withheld was desirable for compassionate reasons.

[69] I agree with the reasoning of the adjudicator in PO-3900 and find it relevant to the circumstances of this appeal. I accept, as the police did in this case, that the appellant's desire to address the death of her son falls within the compassionate grounds exception contemplated by section 14(4)(c). Acknowledging this, the police applied section 14(4)(c) and disclosed significant amounts of information to the appellant regarding the circumstances of her son's passing. What remains is information that is inextricably intertwined with the personal information of other individuals, the substance of which is largely already captured in the information the police have already disclosed to her.

[70] The inclusion of other individuals' personal information does not preclude disclosure under section 14(4)(c), but the privacy interests of those individuals are a consideration under the test. As discussed above, the remaining withheld information is highly sensitive. Disclosing this information would intrude on the privacy of the identifiable individuals. Furthermore, this additional information would not appreciably add to the appellant's understanding around her son's death. In balancing these considerations, disclosure of the withheld information would have a significant negative impact on the

identifiable individuals, and would provide little value to the appellant, either for her stated goal of reopening the investigation or for her understanding of the circumstances of her son's passing. Given this, I find that it has not been established that the disclosure of the specific information remaining at issue is desirable for compassionate reasons as contemplated by the third part of the section 14(4)(c) test.

[71] As the third part of the test was not established, I find that the exception permitting the disclosure of personal information in compassionate circumstances at section 14(4)(c) does not apply to the information remaining at issue.

[72] As such, my initial conclusions regarding the records are unaffected by section 14(4)(c). I uphold the police decision that the withheld portions of records 1, 8, and 11 are exempt under section 38(b) and the withheld portions of records 2-7, 9, and 10 are exempt under section 14(1).

Issue C: Did the police exercise its discretion under section 38(b) regarding records 1, 8, and 11? If so, should this office uphold the exercise of discretion?

[73] The exemption at section 38(b) is discretionary, meaning that the institution can decide to disclose information even if it qualifies for exemption. The institution must exercise its discretion. On appeal, the IPC may determine whether the institution failed to do so.

[74] In addition, the IPC may find the institution erred in exercising its discretion. This can occur, for example, if the institution does so in bad faith or for an improper purpose, takes into account irrelevant considerations, or fails to consider relevant ones. In either case, the IPC may send the matter back to the institution for an exercise of discretion based on proper considerations.¹⁸ The IPC cannot, however, substitute its own discretion for that of the institution.¹⁹

[75] The police state that they made "appropriate and just use of the discretion as contemplated under the *Act*." They note that they made their decision in good faith, stating that they did so while upholding their responsibilities to the appellant, the affected parties, and the public, and did so in consideration of "the spirit and meaning of the *Act*."

[76] In exercising their discretion to withhold some of the information requested, the police state that they considered that the appellant had been provided with her own personal information and that of her daughter; that she was provided with some information regarding her deceased son, based on the application of section 14(4)(c); and that the remaining information was withheld to protect the privacy of the individuals, based on the highly sensitive nature of that information.

[77] The appellant did not address the police's exercise of discretion in her

¹⁸ Order MO-1573.

¹⁹ Section 43(2) of the *Act*.

representations, but her stated position that the deceased's family should be provided with all withheld information could imply that the police failed to exercise its discretion to do so.

[78] I have considered the parties' representations, the information at issue and the circumstances of this appeal. I find the police exercised their discretion under section 38(b) properly in withholding the information. I am satisfied the police considered relevant factors when exercising their discretion. Specifically, they considered the purposes of the *Act* and the personal privacy exemption at section 38(b), the nature of the information at issue and its sensitivity in relation to affected persons, the appellant's sympathetic and compelling need to receive information, the affected parties' privacy interests, and the appellant's right of access. I am satisfied that the police considered the relevant factors and did not take irrelevant factors into account when it made its decision. There is also no evidence to demonstrate that the police exercised their discretion in bad faith or for an improper purpose.

[79] In conclusion, I find the police properly exercised their discretion under section 38(b) to withhold the information at issue from the appellant and I uphold its decision.

ORDER:

I uphold the police's decision and dismiss the appeal.

Original Signed By: _____
Jennifer Olijnyk
Adjudicator

_____ June 12, 2024