

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4686

Appeal PA23-00448

Ministry of the Solicitor General

July 25, 2025

Summary: An individual made a request under the *Freedom of Information and Protection of Privacy Act* to the Ministry of the Solicitor General for records relating to a family member's death. Specifically, the individual sought access to a statement made to the police by a specified individual. The ministry decided to deny access to the statement relying on the personal privacy exemptions in sections 21(1) and 49(b) of the *Act*, taking the view that disclosure of the statement would be an unjustified invasion of the personal privacy of the individual who made that statement.

The requester appealed the ministry's decision to pursue access to the statement on compassionate grounds as contemplated by section 21(4)(d) of the *Act*.

In this order, the adjudicator finds that the circumstances do not demonstrate that disclosure of the statement is desirable for compassionate reasons and accordingly, that section 21(4)(d) does not apply. She finds that disclosure of the statement would be an unjustified invasion of personal privacy of the individual who made the statement and the deceased and the mandatory personal privacy exemption in section 21(1) applies. The adjudicator upholds the ministry's decision and dismisses the appeal.

Statute Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, section 2(1) (definition of "personal information"), 21(1) and 21(4)(d).

Orders Considered: Orders MO-2245 and MO-2237.

OVERVIEW:

[1] This order considers the requester's right of access to a statement made by a specified individual to the police in relation to the death of the requester's family member, in light of the mandatory personal privacy exemption in section 21(1) of the *Freedom of Information and Protection of Privacy Act* (the *Act*).

[2] The requester submitted two requests under the *Act* to the Ministry of the Solicitor General (the ministry) for access to a police report and any statements taken in relation to the death of an identified individual. The requester identified themselves as the sister of the deceased.

[3] The ministry located responsive Ontario Provincial Police (OPP) records and notified affected parties. The ministry issued a decision granting partial access to the records and denying access to portions of them, including a statement, on the basis of the personal privacy exemptions found in sections 21(1) and 49(b) of the *Act*. In its decision letter, the ministry informed the requester that:

[You] have confirmed that you wish to be provided with access to the OPP report regarding the death of your [family member] in accordance with the provisions of the Act that permit disclosure of such personal information to the close relatives of deceased individuals where disclosure is desirable in the circumstances for compassionate reasons. Your request has been considered on this basis.

[4] An affected party appealed to the Information and Privacy Commissioner of Ontario to challenge the ministry's decision to grant partial access to the records and appeal file PA23-00045 was opened. The affected party subsequently provided consent for the release of certain information to the requester and appeal file PA23-00045 was closed.

[5] The ministry issued a revised access decision to the requester providing partial access to the responsive records in accordance with the affected party's consent. The ministry maintained its denial of access to the remaining information, including a statement from the affected party, based on sections 21(1) and 49(b). In addition, the ministry indicated in the decision letter that some of the information in the records was withheld because it is not responsive to the request.

[6] The requester, now the appellant, appealed the ministry's revised decision and this appeal was opened. The appellant advises that she is only pursuing access to the affected party's statement to the police relating to the passing of her brother. She confirms that she is not seeking access to information withheld because it is not responsive. This information has been removed from the scope of the appeal.

[7] As a mediated resolution was not achieved, the appeal was transferred to

adjudication where an adjudicator may conduct an inquiry. The adjudicator originally assigned to the file decided to conduct an inquiry and invited and received representations from the ministry and the appellant.

[8] The file was then transferred to me. I have reviewed the file and determined that I have the information I need to decide the issues in the appeal. Specifically, I have determined that I do not need to invite representations from the affected party who has refused consent to release the information at issue to the appellant. There is no information before me to suggest that the affected party's position has changed and consent for release of their statement would be provided.

[9] For the reasons that follow, I find that the affected party's statement to the police is exempt under the mandatory personal privacy exemption in section 21(1) of the *Act*. Further, I am not persuaded that disclosure for compassionate reasons under section 21(4)(d) is desirable in the circumstances of this appeal. I uphold the ministry's decision not to release the statement and dismiss the appeal.

RECORDS:

[10] The record at issue is a 4-page written statement relating to the death of the appellant's family member.

ISSUES:

- A. Does the statement contain "personal information" as defined in section 2(1) of the *Act*? If so, whose personal information is it?
- B. Does the mandatory personal privacy exemption in section 21(1) of the *Act* apply to the statement?

DISCUSSION:

Issue A: Does the statement contain "personal information" as defined in section 2(1) of the *Act* and, if so, whose personal information is it?

[11] The ministry has decided to withhold the statement on the basis of the personal privacy exemptions in section 21(1) and 49(b) of the *Act*.

[12] To decide which personal privacy exemption, if any, applies to the statement, I must first determine whether it contains personal information and, if so, whose personal information.

[13] If the statement contains the appellant's own personal information, their access

rights are greater than if it does not. Also, if the statement contains the personal information of other individuals, one of the personal privacy exemptions may apply.

[14] Section 2(1) of the *Act* defines “personal information” as “recorded information about an identifiable individual.” Information is “about an individual” when it refers to them in their personal capacity, which means that it reveals something of a personal nature about the individual. Information is about an “identifiable individual” if it is reasonable to expect that they can be identified from the information either by itself or combined with other information.¹

[15] Section 2(1) gives a list of examples of personal information. The list includes information relating to an individual’s race, ethnic origin, sex, marital or family status (paragraph (a)), information relating an individual’s medical, psychiatric or employment history (paragraph (b)), an individual’s personal opinions or views (paragraph (e)), the opinions or views of another individual about an individual (paragraph (g)) and an 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 (paragraph (h)).²

[16] The list of examples of personal information under section 2(1) is not a complete list. Other kinds of information can also be “personal information.”³

[17] The ministry’s position is that the statement contains a significant amount of personal information belonging to the appellant’s deceased family member, the affected party and other individuals. The ministry cites section 2(2) of the *Act*, which provides that personal information about a deceased individual is considered to be such for up to 30 years following their death.

[18] The ministry states that severing the identifying information from the statement would not effectively remove the personal information. The ministry submits that this is because it is clear from the appellant’s request that they know the identity of the author of the statement. The ministry submits that the IPC has previously applied this approach to find that severance of a record would not remove the personal information and cites Order PO-2955 as an example.

[19] The ministry submits that an expansive definition of “personal information” should be taken. In this regard, the ministry submits that the approach of the adjudicator in Order P-230 should be adopted and if there is a reasonable expectation that an individual can be identified from the information in the record, then the information should qualify as “personal information” under section 2(1).

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

² Paragraphs (a), (b), (e), (g) and (h) of the definition of “personal information” in section 2(1).

³ See Order 11.

[20] The appellant's position is that the statement contains the personal information of the deceased and the affected party.

[21] From my review of the statement, I am satisfied that it contains the personal information of the appellant's deceased family member and the affected party.

[22] In respect of the appellant's deceased family member, the personal information in the statement consists of their name, address, marital status and their medical and employment history. Some of the information in the statement is a record of the deceased's opinions and views and also the affected party's opinions and views regarding the deceased. This information qualifies as the deceased's personal information within the meaning of paragraphs (a), (b), (e), (g) and (h) of the definition of "personal information" in section 2(1) of the *Act*.

[23] In respect of the affected party, the personal information in the statement consists of their name, marital status and their personal opinions and views. In addition, the statement, if disclosed, would reveal information of a personal nature about the affected party's participation in a police investigation. This information qualifies as the affected party's personal information within the meaning of paragraphs (a), (b), (e) and (h) of the definition of "personal information" in section 2(1) of the *Act*. In respect of some of the information in the statement, I find that it also qualifies as the personal information of the deceased.⁴

[24] I find that, in the statement, the deceased's personal information is mixed with the personal information of the affected party in such a way that it is not reasonably practicable for it to be severed. In other words, the personal information in the statement is inextricably intertwined.

[25] Finally, I find that the statement does not contain the appellant's personal information. Accordingly, I will consider whether the statement is exempt from disclosure under the mandatory personal privacy exemption in section 21(1) of the *Act*.

Issue B: Does the mandatory personal privacy exemption in section 21(1) apply to the statement?

[26] One of the purposes of the *Act* is to protect the privacy of individuals with respect to personal information about themselves held by institutions. Section 21(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 several exceptions and limitations.

⁴ This finding is explained in more detail in my analysis of the application of section 21(4)(d) in Issue B below.

Exceptions to the general rule

[27] The section 21(1)(a) to (e) exceptions are relatively straightforward. If any of the five exceptions covered in sections 21(1)(a) to (e) exist, the institution must disclose the information.

[28] The section 21(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 21(2), (3) and (4) help in deciding whether disclosure would or would not be an unjustified invasion of personal privacy.

[29] Sections 21(3)(a) to (h) should generally be considered first.⁵ These sections outline several situations in which disclosing personal information is presumed to be an unjustified invasion of personal privacy. If one of these presumptions applies, the personal information cannot be disclosed unless:

- There is a reason under section 21(4) that disclosure of the information would not be an "unjustified invasion of personal privacy," or
- There is a "compelling public interest" under section 23 that means the information should nonetheless be disclosed (the "public interest override").⁶

[30] If the personal information being requested does not fit within any of the presumptions under section 21(3), then the factors set out in section 21(2), if applicable, determine whether or not disclosure would be an unjustified invasion of personal privacy. If no factors favouring disclosure are present, the section 21(1) exemption – the general rule that personal information should not be disclosed – applies because the exception in section 21(1)(f) has not been established.⁷ However, if any of the situations in section 21(4) is present, then section 21(2) need not be considered as disclosure of the personal information is **not** an unjustified invasion of personal privacy, even if one of the section 21(3) presumptions exist.

[31] The ministry's position is that it is prohibited by the mandatory personal privacy exemption in section 21(1)(f) from disclosing the personal information in the statement to anyone other than the individuals to whom the personal information relates where to do so would constitute an unjustified invasion of personal privacy.

[32] The ministry submits that the presumption against disclosure in section 21(3)(b) applies to the statement because it was created as part of an OPP investigation into the circumstances of the deceased's demise. The ministry submits that the statement was part of the evidence that the OPP used in their investigation and had there been evidence

⁵ If any of the section 21(3) presumptions are found to apply, they cannot be rebutted by the factors in section 21(2) for the purposes of deciding whether the section 21(1) exemption has been established.

⁶ *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.).

⁷ Orders PO-2267 and PO-2733.

of criminal wrongdoing, charges under the *Criminal Code* could have been laid. The ministry relies upon Order MO-3713 in which the IPC upheld the application of the presumption in section 21(3)(b) to records involving sudden deaths, where suicide is determined to be the cause of death.

[33] In the alternative, the ministry submits that the factors in sections 21(2)(f) (highly sensitive) and 21(2)(h) (supplied in confidence) apply to the determination of whether disclosure of the statement would constitute an unjustified invasion of personal privacy.

[34] The ministry states that in Order P-1618 the IPC held that the personal information of individuals who are "complainants, witnesses or suspects" as part of their contact with the police is "highly sensitive" so that section 21(2)(f) applies. The ministry submits that the personal information of the affected party is contained in a witness statement to the police and is therefore highly sensitive and section 21(2)(f) applies and weighs against its disclosure.

[35] The ministry also submits that the fact that the affected party has not provided consent for disclosure of their personal information contained in a law enforcement investigation record is a factor weighing against disclosure. The ministry cites Order PO-3712 where the IPC followed a similar reasoning in support of this submission.

[36] The ministry submits that the factor in section 21(2)(h) applies and weighs against disclosure. The ministry states that given the nature, context and surrounding circumstances in which the statement was created, the affected party would have a reasonable expectation of confidentiality in respect of the information they supplied to the police. The ministry relies on Order MO-3742 in which the IPC upheld the application of the personal privacy exemption to a witness statement provided in the context of a law enforcement investigation.

[37] The appellant's position is that the exception to the personal privacy exemption in section 21(1)(e) applies and that section 21(3)(b) is also relevant to her request. In summary, the appellant states that she is pursuing access to the witness statement on compassionate grounds. The appellant provides confidential representations about the reasons for her request. These reasons relate to the police investigation into her family member's death.

Exception in section 21(1)(e)

[38] Section 21(1)(e) provides an exception to the mandatory personal privacy exemption for the disclosure of personal information for research purposes and states:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

(e) for a research purpose if,

- (i) the disclosure is consistent with the conditions or reasonable expectations of disclosure under which the personal information was provided, collected or obtained,
- (ii) the research purpose for which the disclosure is to be made cannot be reasonably accomplished unless the information is provided in individually identifiable form, and
- (iii) the person who is to receive the record has agreed to comply with the conditions relating to security and confidentiality prescribed by the regulations [...]

[39] While I acknowledge the confidential reasons for the appellant seeking access to the affected party's witness statement, I am not persuaded that these reasons qualify as "research" as contemplated by the exception in section 21(1)(e).

[40] "Research" is not a defined term in the *Act*. Previous orders have adopted the definition provided in the *Personal Health Information Protection Act (PHIPA)*, which is another statute within the jurisdiction of the IPC.⁸ Section 2 of *PHIPA* contains the following definition:

"research" means a systematic investigation designed to develop or establish principles, facts or generalizable knowledge, or any combination of them, and includes the development, testing and evaluation of research.

[41] Adopting this definition, I find that disclosure of the affected party's statement to the appellant, which the appellant is seeking for reasons relating to the police investigation, is not for a research purpose. Accordingly, I find that the exception in section 21(1)(e) does not apply in the circumstances of this appeal.

Presumptions in section 21(3)

[42] For the reasons that follow, I find that the presumptions in section 21(3)(a) and (b) apply to the statement.

[43] I agree with the ministry that the presumption in section 21(3)(b) (possible violation of law) applies in the circumstances of this appeal. Though the appellant's position is that section 21(3)(b) is relevant to the appeal, she does not appear to acknowledge that it creates a presumption against disclosure of the affected party's statement.

[44] Section 21(3)(b) states that disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information was

⁸ See Orders PO-3693 and 3694.

compiled and is identifiable as part of an investigation into a possible violation of law.

[45] As a law enforcement agency, the OPP has responsibility for investigating offences under the *Criminal Code*. From my review of the statement and the circumstances of this appeal, I accept the ministry's submission that the affected party's statement was created by the police as part of a sudden death investigation.

[46] The presumption in section 21(3)(b) requires only that there be an investigation into a possible violation of law.⁹ There is no requirement that criminal charges be laid.¹⁰

[47] Accordingly, I find that the presumption in section 21(3)(b) applies to the affected party's statement and its disclosure is presumed to be an unjustified invasion of their personal privacy.

[48] The application of one presumption against disclosure is sufficient to meet the mandatory privacy exemption in section 21(1). However, I have found that the affected party's statement contains information about the deceased's medical history that qualifies as the deceased's personal information. Section 21(3)(a) states that disclosure of personal information that relates to an individual's medical history is presumed to be an invasion of their personal privacy.

[49] Accordingly, I find that the presumption in section 21(3)(a) also applies to the affected party's statement and its disclosure is presumed to be an unjustified invasion of the deceased's personal privacy.

[50] As I find that the presumptions in section 21(3)(a) and (b) apply, the statement is exempt under section 21(1) unless section 21(4) or the public interest override in section 23 apply so that the statement should be disclosed. Neither party has claimed the public interest override applies and it does not appear to me to be applicable in the circumstance of this appeal. I now turn to section 21(4).

Limitation in section 21(4)(d) – compassionate reasons

[51] Section 21(4) sets out limitations to the general rule in section 21(1) that an institution cannot disclose the personal information of another individual to a requester. If any of the paragraphs in section 21(4) apply, then the disclosure of the requested personal information is not an unjustified invasion of personal privacy within the meaning of section 21(1)(f).

[52] In this appeal, the circumstances listed in section 21(4)(d) are relevant to the disclosure of the affected party's statement. No other circumstances listed in section 21(4) have been raised by the appellant and in my view, they are not present in this

⁹ Orders P-242 and MO-2235.

¹⁰ The presumption can also apply to records created as part of a law enforcement investigation where charges were laid but subsequently withdrawn (Orders MO-2213, PO-1849 and PO-2608).

appeal.

[53] Section 21(4)(d) states, in part:

[A] disclosure does not constitute an unjustified invasion of personal privacy if it,

(d) 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] The term "close relative" is defined in section 2(1) of the *Act*:

"close relative" means a parent, child, grandparent, grandchild, brother, sister, uncle, aunt, nephew or niece, including by adoption.

[55] For section 21(4)(d) to apply, the following conditions must be met:

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.¹¹

[56] When considering whether section 21(4)(d) 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 factors such as the need to assist the requester in the grieving process.¹² 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."¹³

[57] In Order MO-2245, former Commissioner Brian Beamish considered the legislative intent of the equivalent section in the municipal version of the *Act* (section 14(4)(c)) and stated:

Where section 14(4)(c) applies, consent (dealt with in section 14(1)(a)) is irrelevant. By means of section 14(4)(c), the Legislature has recognized a group of individuals who have a special interest in gaining access to the personal [information] of a deceased individual. The intent of the section is to allow for the disclosure of information to family members even though

¹¹ Orders MO-2237 and MO-2245.

¹² Order MO-2245.

¹³ Order MO-2245.

that information would not have been disclosable to them during the life of the individual.

[58] The ministry's position is that section 21(4)(d) does not apply. The ministry submits that in the circumstances of this appeal where the personal information in the statement is highly sensitive and was compiled as part of a law enforcement investigation, disclosure without the affected party's consent would not serve the intended purpose of the provision.

[59] The ministry relies on Order PO-4087 where the IPC held that the privacy interests of other individuals "should not automatically yield to the compassionate reasons that may call for full disclosure" to the requester in that appeal. The ministry submits that the same approach applies in this appeal.

[60] The appellant's position is that she is seeking access to the affected party's statement on compassionate grounds. The appellant provides confidential representations about the reasons for her request, which relate to the police investigation into her family member's death.

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

[61] I am satisfied that the first two conditions for section 21(4)(d) to apply are met as the statement contains the personal information of a deceased individual and the appellant, the deceased's sister, is a "close relative" within the meaning of the *Act*. Accordingly, conditions one and two are met.

Condition three: disclosure is desirable for compassionate reasons in the circumstances

[62] I have carefully considered the circumstances of this appeal, the contents of the statement and the appellant's reasons for pursuing its disclosure. I accept that the appellant is seeking access to the affected party's statement on compassionate grounds. However, for the reasons that follow, I am not persuaded that disclosure is desirable in the circumstances of this appeal.

[63] I have found that the statement at issue contains the personal information of the affected party and of the deceased. In addition, I have found that some of that personal information belongs to *both* the affected party and the deceased. In Order MO-2237, the adjudicator considered the approach to be taken in cases where the personal information of the deceased also qualifies as the personal information of other individuals, within the meaning of the definition in section 2(1) of the *Act*. After reviewing the history that led to the *Act's* amendment to enable relatives of deceased individuals to obtain access to their personal information, the adjudicator stated (in the context of the equivalent provision in the municipal version of the *Act*, section 14(4)4(c)):

[I]n my view, it is consistent with both the definition of "personal information" in section 2(1) and the legislative purpose behind this section

to interpret “personal information about a deceased individual” as including not only personal information solely relating to the deceased, but another individual or individuals as well.

The conclusion that personal information about a deceased individual can include information about other individuals, raises the further question of how the information of those other individuals should be assessed in deciding what to disclose under section 14(4)(c). In my view, assistance is provided in that regard by the legislative text, which permits disclosure that is “in the circumstances, desirable for compassionate reasons.”

Where this is the case, the “circumstances” to be considered would, in my view, 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).

[64] I agree with this approach and adopt it in this appeal. I have considered the overall circumstances of this case and, in particular, that some of the deceased’s personal information in the statement also qualifies as the personal information of the affected party. I have also considered that this personal information is inextricably intertwined so that the personal information of the deceased alone cannot reasonably practicably be severed from the statement.

[65] In addition, I have reviewed the records that the ministry has already disclosed to the appellant in response to the request. These records were compiled as part of the police investigation into the death of the appellant’s family member and include information about the circumstances of their passing.

[66] Considering the factors in section 21(2), I find that the factors in section 21(2)(f) (highly sensitive) and 21(2)(h) (supplied in confidence) arise in the circumstances of this appeal and are of assistance.

[67] Section 21(2)(f) applies if the information at issue is “highly sensitive.” To be considered “highly sensitive”, there must be a reasonable expectation of significant personal distress if the information is disclosed.¹⁴

[68] I have considered the nature of the record at issue: a statement made by the affected party to the police in the immediate aftermath of the deceased’s death. In my view, there is a reasonable expectation that disclosure of the affected party’s personal information in the statement in these circumstances would cause them significant personal distress.

¹⁴ Orders PO-2518, PO-2517, MO-2262 and MO-2344.

[69] Section 21(2)(h) applies if the individual supplying the information and the recipient had an expectation that the information would be treated confidentially, and that expectation is reasonable in the circumstances. The ministry submits and, I accept, that there is an objective expectation of confidentiality in circumstances where individuals provide personal information to the police in the course of law enforcement investigations.

[70] When section 21(4)(d) arises, an affected party's objections cannot prevent the disclosure of the *deceased* individual's personal information.¹⁵ However, in my view an affected party's objection to disclosure is relevant when the information at issue includes their personal information. This is the situation in this appeal and I find that the affected party's objection is one of the circumstances that is relevant to deciding whether disclosure is desirable for compassionate reasons.

[71] Without revealing the appellant's specific reasons for seeking disclosure on compassionate grounds, I acknowledge that granting the appellant access to information relating to her family member's death would be, by its very nature, compassionate. However, section 21(4)(d) requires that the disclosure be desirable for compassionate reasons in relation to *all* the circumstances relating to the request. I have considered all the circumstances of the request, including the nature of the deceased's personal information and the fact that it is inextricably intertwined with the personal information of the affected party, for example in the affected party's views and opinions of the deceased. In addition, I have considered the privacy interests of the affected party who provided the information to the police in the course of their investigation into a sudden death, that it was provided with an expectation of confidentiality, their objection to its release and that its disclosure can be expected to cause the affected party significant distress. I have also considered the ministry's decision to grant access to some of the information in the responsive records and the extent to which the disclosure of the statement would provide the appellant with any additional information regarding the deceased's death.

[72] In all the circumstances, I find that the privacy interests of the deceased and the affected party outweigh the compassionate reasons favouring disclosure of the statement. Accordingly, I find that the third condition is not met for the application of section 21(4)(d) and disclosure is not desirable for compassionate reasons.

[73] In summary, I find that the presumptions against disclosure in section 14(3)(a) and 14(3)(b) apply to the affected party's statement and neither section 21(4)(d) nor section 23 apply so that it should nonetheless be disclosed. I find that the statement is exempt under the mandatory personal privacy exemption in section 21(1).

¹⁵ See PO-4563.

ORDER:

I uphold the ministry's decision not to disclose the statement and dismiss the appeal.

Original Signed by: _____
Katherine Ball
Adjudicator

_____ July 25, 2025