



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER MO-2430

Appeal MA07-263

Halton Regional Police Services Board



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NATURE OF THE APPEAL:

The Halton Regional Police Service (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to “investigative case records relating to the death” of the requester’s daughter.

After having contacted the requester to clarify the request, the Police confirmed in a letter dated June 13, 2007, that she is requesting access to the following records:

- A specific sudden death occurrence report
- The investigating officer’s notebook entries
- Copy of the photographs pertaining to the accident

The Police further advised that a number of individuals whose interests may be affected by the outcome of the appeal (the affected persons) would be contacted to seek their views on disclosure. Following notification of the affected persons and after consideration of the recent amendment in section 14(4)(c) of the *Act*, the Police issued the following decision:

- Photographs denied in full pursuant to sections 38(a) and (b) (personal privacy)
- Sudden Death Occurrence Report and investigating officers’ notebook entries – partial access granted pursuant to sections 14(1) and 38(b) with reliance upon the considerations in sections 14(2)(f) and (i), and the presumptions in sections 14(3)(a), (b) and (h) (personal privacy)
- Patrol Zone and statistical codes withheld in full pursuant to sections 8(1)(e) and (l) (law enforcement)

The requester, now the appellant, appealed the Police’s decision.

During mediation, the Police advised that some of the information pertaining to other occurrences had been removed from the records as it was deemed non-responsive to the request.

In response, the appellant indicated that the non-responsive portions of the records are not at issue in the appeal.

With respect to the information and statements provided by the affected individuals, the Police advised that they had obtained the consent from two affected persons, and disclosed their information to the appellant.

In response, the appellant indicated that she is pursuing access to the information and statements provided by the remaining affected persons and a copy of the photographs. The appellant takes the position that disclosure of the records is desirable for compassionate reasons referring to the recent amendments to section 14(4) of the *Act*.

Following discussion with the Police, the mediator attempted to contact seven affected persons who had been interviewed by the Police and whose information had been severed from the records. Four individuals did not reply, one individual could not be reached and two objected to the disclosure of their personal information.

After the issuance of the original mediator's report and following discussions with the mediator, the appellant advised that the information pertaining to the patrol zone and/or statistical codes which had been exempted pursuant to sections 8(1)(e) and (l), is no longer at issue.

No further mediation was possible and the file was transferred to adjudication. I initially sent a Notice of Inquiry to the Police and six affected persons, setting out the facts and issues on appeal and seeking their representations. I received representations from the Police and two affected persons. The two affected persons did not consent to the disclosure of their personal information.

I then sent a Notice of Inquiry to the appellant, along with a copy of the non-confidential portions of the Police's representations. The appellant also provided representations in response.

Lastly, I provided the Police with a copy of the appellant's representations and asked the Police to respond to the appellant's representations on the application of section 14(4)(c) of the *Act*. The Police provided additional representations.

Following its submissions in reply, the Police issued a revised decision letter to the appellant, also providing a copy to this office. The Police's revised decision is as follows:

- Full access was granted to the photographs
- Partial access to the Sudden Death occurrence report and to the investigating officers' notebook entries was denied pursuant to sections sections 14(1) and 38(b) with reliance upon the considerations in sections 14(2)(f) and (i), and the presumptions in sections 14(3)(a), (b) and (h) (personal privacy), and section 8(2)(a) (law enforcement report)

After receiving the Police's revised decision, I contacted the appellant to find out whether the appellant wished to proceed with her appeal. The appellant confirmed that she still wished to proceed with the appeal for the information that was withheld. The appellant continues to rely on section 14(4)(c) and the representations that she provided earlier in response to the Notice of Inquiry.

RECORDS:

The records that remain at issue are the severed portions of the Sudden Death Report and investigating officers' notebook entries. For ease of reference, I have numbered the pages of the Sudden Death Report as follows and I will refer to the Officer's notes as follows:

Record	Page Number	Description of Information Withheld
Sudden Death Report	1	Affected persons' address, telephone, date of birth, phone numbers etc.

	2	Affected persons' and deceased information
	6	Affected persons' information
	7	Affected person's information
	8	Affected persons' information (telephone numbers)
	9	Affected persons' information
	11	Affected persons' information (name, phone number, address)
	13	Deceased's information
	14, 16, 17	Property Tags
	18	Affected persons' and deceased's information
	19	Affected persons' information (names and phone numbers); deceased's information
	20 - 22	Affected persons and deceased's information (statement to Police)
	22 - 23	Affected person, appellant and deceased's information (statement to Police)
	24 - 26	Affected persons and deceased's information (statement to Police)
	26 - 27	Affected persons and deceased's information (statement to Police)
	27 - 29	Affected persons and deceased's information (statement to Police)
	31 - 32	Affected persons and deceased's information (statement to Police)
	33	Affected person and deceased's information
Police Officers' Notes	Officer #1	Affected persons' information
	Officer #2	Affected persons' information (statement to Police); deceased's information
	Officer #3	Deceased and affected persons' information (names,

		address, phone numbers, statement information)
	Officer #4	Police Code information only remaining at issue
	Officer #5	Police code information only remaining at issue
	Officer #6	Police code information only remaining at issue
	Officer #7	Police Code information only remaining at issue

DISCUSSION:

In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains “personal information” and, if so, to whom it relates. That term is defined in section 2(1) 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 where 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;

The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information [Order 11].

The Police submit that the records contain the personal information of the deceased and the affected persons. This personal information includes names, addresses, dates of birth, telephone number, statements made to officers and other information relating to these individuals.

I have carefully reviewed all of the records and find that they contain the personal information of the appellant's daughter, as defined in section 2(1). The information in the records includes personal information relating to the daughter's name, her activities on the day of her death and the circumstances surrounding her death, as related by the affected persons. Thus, the records contain the personal information of the deceased within the meaning of paragraphs (a), (b), (g) and (h) of the definition of that term in section 2(1).

The records also contain the personal information of a number of affected persons who were with the appellant's daughter before she died, or present at the time of her death, including information relating to their names, addresses, phone numbers, and occupations. This information relates only to the affected persons and does not include any personal information of the appellant's daughter. However, some of the affected persons' personal information also includes information relating to their relationship with the appellant's daughter and their observations of the circumstances surrounding the appellant's daughter's death. Accordingly, these records contain the personal information of the affected persons within the meaning of paragraphs (a), (b), (c), (d), (e), (g) and (h) of the definition of that term in section 2(1).

Some of the records also contain the personal information of the appellant; namely her name, address, phone number and other information relating to the identification of her daughter following her death. This information has been disclosed to the appellant. However, some of the records also contain information about the appellant which has not been disclosed to her. This includes the affected persons' descriptions of the relationship between the appellant and her daughter and information about other individuals who were with the appellant at the hospital. Accordingly, I find that these portions of the records contain the personal information of the appellant within the meaning of paragraphs (g) and (h) of the definition of that term in section 2(1).

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) [Order M-352]. Some exemptions, including the invasion of privacy exemption at section 14(1), are mandatory under Part I but

discretionary under Part II, and thus in the latter case an institution may disclose information that it could not disclose if Part I is applied [Order MO-1757-I].

Furthermore, the correct approach is to review the entire record, not only the portions remaining at issue, to determine, 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* [Order M-352].

Applying this record-by-record approach, I find that the Sudden Death Report and the police officer's notes contain the personal information of the appellant and other individuals, including her daughter. Accordingly, I will consider whether the severed portions of these records qualify for the personal privacy exemption under the discretionary exemption at section 38(b), found in Part II of the *Act*.

PERSONAL PRIVACY

Under section 38(b), where a record contains personal information of both the requester and another individual, and the disclosure of the information would constitute an "unjustified invasion" of another individual's personal privacy, the institution may refuse to disclose that information to the requester.

If the information falls within the scope of section 38(b), that does not end the matter. Despite this finding, the institution may exercise its discretion to disclose the information to the requester. This involves a weighing of the requester's right of access to his or her own personal information against the other individual's right to protection of their privacy.

Sections 14(1) to (4) provide guidance in determining whether the unjustified invasion of personal privacy threshold under section 38(b) is met. In determining whether the exemption in section 38(b) applies, 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 personal privacy of the individual to whom the information relates.

If any of paragraphs (a) to (h) of section 14(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 14. A presumed unjustified invasion of personal privacy under section 14(3) cannot be rebutted by the factors set out in section 14(2). A presumption can however be overcome if the personal information is found to fall under section 14(4) of the *Act* [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767]. Section 14(4) creates an exception to the exemption in section 14(1) and if it applies, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 14. Section 14(4)(c) has potential relevance to this appeal.

I will first address the application of the section 14(3)(b) presumption.

Section 14(3)(b)

The Police have claimed the application of the presumption in section 14(3)(b) for all of the personal information in the records at issue. Section 14(3)(b) reads:

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;

The Police submit that:

The police were called to investigate a sudden death, to investigate possible foul play, thereby quite possible a violation of law. The undisclosed information was compiled as part of a law enforcement investigation and disclosure would constitute an unjustified invasion of the privacy of the deceased and other affected parties, except to the extent that it is necessary to prosecute a violation of law or fulfil the principle 'compassion'.

...

The personal information contained within this file contains information gathered from various sources, necessary to compile the investigative file. The information was compiled in order to investigate the circumstances surrounding the discovery of the deceased.

Therefore since the personal information relates to records compiled as part of an investigation into the incident, disclosure of this material would constitute as an unjustified invasion of personal privacy.

The appellant did not make representations on this issue.

Having carefully reviewed the records and representations, I find that section 14(3)(b) applies to the personal information of the appellant, the affected persons and the appellant's daughter found in the records as the information was compiled and is identifiable as part of an investigation into a possible violation of law. Section 14(3)(b) applies whether or not charges were laid [See Order PO-1849]. Accordingly, the disclosure of the personal information at issue in the records is presumed to constitute an unjustified invasion of personal privacy. Therefore, subject to my consideration of the Police's exercise of discretion, disclosure of the information in the records

would constitute an unjustified invasion of the personal privacy of identifiable individuals under section 38(b).

Before I consider the application of the exception in section 14(4)(c) to the information at issue, I find that the following records are exempt from disclosure under section 38(b) as these records do not include the personal information of the deceased. The following pages of the records contain the personal information of the affected persons or appellant only, particularly their names, addresses, phone numbers, dates of birth and other information not relating to the deceased. Section 14(4)(c) does not apply to the personal information of the appellant and the affected persons and I will not be considering whether section 14(4)(c) applies to these portions of the records.

Sudden Death Report

- Page 1 contains the names, addresses, phone numbers, dates of birth, sex, race, and employment information for three individuals.
- Page 6 contains a statement by a police officer about two individuals.
- Page 7 contains name of an individual and his employment history.
- Page 8 contains the phone numbers for three individuals.
- Page 9 contains the employment history of an individual.
- Page 11 contains the names, dates of birth, address and phone numbers for two individuals.
- Page 18 contains names, addresses and phone numbers of six individuals.
- Page 19 contains the names of two individuals and the phone numbers of an individual.
- Page 24 contains the name, address and employment information of an individual.
- Page 26 contains the name, address and employment information of an individual.
- Page 27 contains the name, address and date of birth of an individual.
- Page 31 contains the name, address, condition and phone number of an individual.

Police Officers' Notes

Officer #1

- Page 2 of the notes contain the names of the fire crew. I note from the Sudden Death Report that this information, with the exception of the last names, was disclosed to the appellant. The names of the fire crew, with the exception of the last name, should not be found exempt under section 38(b), because to find otherwise would be inconsistent with the treatment of this information in the Sudden Death Report.
- Page 3 of the notes contains the phone number of an individual.
- Page 4 of the notes contains the phone number of an individual.
- Page 5 of the notes contains the phone number of an individual.

Officer #2

- Page 1 of notes contains name, address, date of birth, phone number of two individuals.
- Page 2 contains information about two individuals.

Officer #3

- Page 7 of the notes contains name and phone number of an individual.
- Page 8 of the notes contains the address and phone number of an individual.
- Page 14 of the notes contains the phone numbers of an individual.
- Pages 15 and 16 contain the name, phone number, date of birth and employment information for an individual.

For the above pages of records (except page 2 of Officer #1's notes), the presumption in section 14(3)(b) applies to personal information that is not the personal information of the deceased. Therefore, subject to my consideration of the Police's exercise of discretion and the absurd result principle discussed below, disclosure of this information would constitute an unjustified invasion of the personal privacy of identifiable individuals under section 38(b).

ABSURD RESULT

Where the requester originally supplied the information or the requester is otherwise aware of it, the information may be found not exempt under section 38(b), because to find otherwise would be absurd and inconsistent with the purpose of the exemption [Orders M-444, MO-1323].

The absurd result principle has been applied where, for example:

- the requester sought access to his or her own witness statement [Orders M-444, M-451]
- the requester was present when the information was provided to the institution [Orders M-444, P-1414]
- the information is clearly within the requester's knowledge [Orders MO-1196, PO-1679, MO-1755]

If disclosure is inconsistent with the purpose of the exemption, the absurd result principle may not apply, even if the information was supplied by the requester or is within the requester's knowledge [Orders M-757, MO-1323, MO-1378].

In both the Sudden Death report and police officers' notes, the Police have withheld the names of a number of individuals that were with the appellant at the hospital for the viewing. Based on my review of the records, I find that the appellant would have been present when the information was provided to the officer who took this information down and this information is clearly within the appellant's knowledge. In the circumstances, considering the withheld information, I find that refusing to disclose the withheld personal information about the other identifiable individual would lead to an absurd result [Orders PO-1679 and MO-1755]. Therefore, I will order the Police to disclose this information to the appellant.

I will now determine whether section 14(4)(c) permits further disclosure of the deceased's personal information (which is co-mingled with the information of the appellant, the affected persons and other identifiable individuals).

14(4)(c) – compassionate reasons

Section 14(4)(c) reads:

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.

A finding that the exception in section 14(4)(c) applies to some or all of the personal information means that disclosure of that information would not be an unjustified invasion of personal privacy. Accordingly, where this provision applies, the information is not exempt under section 38(b) or section 14(1) [see Orders MO-2237, MO-2245].

The appellant submits that section 14(4)(c) applies in this appeal to allow the disclosure of the personal information of her deceased daughter.

Scope of section 14(4)(c)

In Order MO-2237, Assistant Commissioner Brian Beamish determined how the exception in section 14(4)(c) should be applied to information that is clearly the personal information of the deceased individual, but, at the same time, is also the personal information of another individual or individuals. He stated that:

The first question to address here is whether the reference to “personal information about a deceased individual” can include information that also qualifies as that of another individual. In my view, this question should be answered in the affirmative. The circumstances of an individual’s death, particularly one that is followed by a police or coroner’s investigation, are likely to involve discussions with other individuals that will entail, to a greater or lesser extent, the collection and recording of those individuals’ personal information. In my view, an interpretation of this section that excludes any information of a deceased individual on the basis that it also qualifies as the personal information of another individual would be inconsistent with the definition of “personal information”, set out above, since the information would clearly qualify as recorded information “about” the deceased individual. It would also frustrate the obvious legislative intent behind section 14(4)(c), of assisting relatives in coming to terms with the death of a loved one.

In Order MO-2237, Assistant Commissioner Beamish determined that the application of section 14(4)(c) requires a consideration of the following questions, all of which must be met in order for the section to apply:

1. Do the records contain the personal information of a deceased individual?
2. Is the requester a spouse or “close relative” of the deceased individual?
3. Is the disclosure of the personal information of the deceased individual?

Step 1 – Personal Information of the Deceased

The undisclosed information in the Sudden Death Report and the police officers' notes consists of the personal information of the deceased, which is comingled with the personal information of the appellant, affected persons and other identifiable individuals. I find that this requirement for the application of section 14(4)(c) is satisfied.

Step 2 – Spouse or “Close Relative”

“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, whether related by blood or adoption;

I am satisfied that the appellant is the parent of the deceased individual whose personal information is contained in the records at issue, and therefore she is a “close relative”. I find that this requirement for the application of section 14(4)(c) is satisfied.

Step 3 – Desirable for Compassionate Reasons

Representations

In their initial representations, the Police did not apply the exception at section 14(4)(c) as they determined that the appellant was not a close relative of the deceased. However, in its reply representations, the Police acknowledged that the appellant was the parent of the deceased and that she met the definition of “close relative” in section 2(1) of the *Act*. However, because the deceased was not in the legal custody of the appellant at the time of her death, the Police submit:

...the right of access to information must be limited enough to satisfy the requirement of section 14(4)(c), but robust enough to protect the integrity of the deceased.

The Police further submit:

In paragraph five [of the appellant's representations], it suggests, “The appellant simply wants to know and understand the circumstances surrounding her daughter's death for her closure”. If one looks at the disclosed police occurrence report, there is a detailed synopsis of the events leading to and surrounding the untimely death of the deceased. The institution has revealed details of where and how this sudden death occurred, which, in our opinion satisfies the requirement for “understanding the circumstances surrounding the death.” The report outlines particulars of when and how the deceased was found up until the point of the notification...The appellant has been granted partial access to a 34 page

comprehensive report that contains enough detail to aid in the understanding of the circumstances surrounding the death of her daughter.

...

Other than the information of the deceased, the edited portions of the records also contain personal information belonging to affected parties who have not consented to release of their information. There are numerous orders that have in past preserved the protection of privacy of individuals who do not wish their information to be disclosed. The notice of inquiry states that the mediator attempted to contact seven affected parties with the following outcome: 'four individuals did not reply, one could not be reached and two objected to the disclosure of their information'.

Finally, the Police submit that while they agree that compassionate grounds have been identified as a compelling interest in access, there must be "specific parameters set that balance the criteria of 'compelling interest' against the preserving of the privacy of deceased individuals."

The appellant states that disclosure is desirable for compassionate reasons and:

...as the mother of the deceased [she needs] to know the circumstances surrounding her child's untimely death. This is important for a variety of reasons, including the Appellant's right to closure and peace, which is congruent to the very essence of the meaning of compassionate reasons under section 14(4)(c). The Appellant simply wants to know and understand the circumstances surround her daughter's death for her closure. Her situation falls squarely within the meaning of compassionate grounds, under section 14(4)(c).

...

The institution's stated reason for non-disclosure of the photographs and sudden death report is to protect the Appellant from trauma and, that they would play no role in her closure. However, this is not a decision that the Institution is entitled to make for the mother. This is a highly personal and complex decision that only a bereaved mother can and should make. The Appellant is fully aware of the nature of these documents but is nevertheless requesting them for her closure.

In relation to the investigating officer's notebook entries which may contain personal information of others in addition to personal information of the child, the Appellant is requesting full disclosure if the personal information is inextricably intertwined and cannot be severed (see *Information and Privacy Commissioner/Ontario*, Order MO-2237, 2007, p.11). In the event that the information is severable, the Appellant requests disclosure of the personal information relating to her deceased daughter.

The appellant states that as she is a grieving mother, disclosure of the withheld information is warranted under section 14(4)(c) for compassionate reasons and would not constitute an unjustified invasion of personal privacy.

Finding

The Police's main concern is that the remaining withheld information contains highly sensitive information about the deceased, as well as information about other identifiable individuals who have not given their consent to the disclosure of their personal information.

Personal information of the deceased

In Order MO-2245, Assistant Commissioner Brian Beamish ordered the disclosure of highly sensitive personal information of a deceased individual to a close relative. In doing so, the Assistant Commissioner stated the following:

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 that information would not have been disclosable to them during the life of the individual. In my view, it is a tacit recognition by the Legislature that, after the death of an individual, it is that person's spouse or close relatives who are best able to act in their "best interests" with regard to whether or not particular kinds of personal information would assist them in the grieving process. The task of the institution, and this office on appeal, is to determine whether, "in the circumstances, disclosure is desirable for compassionate reasons." This does not place the institution "*in loco parentis*" in the manner suggested by the Police when the disclosure is to adult relatives. Again, on the question of what is "compassionate", I accept the evidence and representations of the appellant.

I adopt the Assistant Commissioner's approach in this appeal and accept the evidence and representations of the appellant regarding her compassionate need for all of the information relating to her daughter's death.

I accept the Police's representations that the withheld information about the deceased is sensitive personal information relating to the deceased's life and that this information would normally be protected under section 14(1) of the *Act* if the requester did not fall within the close relative category of requester described in section 14(4)(c). That being said, I give considerable weight to the fact that the appellant has already received a significant amount of information about her daughter's death. In addition, the appellant has also received the photographs which were originally withheld. Despite the appellant's awareness of the cause of her daughter's death and the knowledge of the type of information in the records, the appellant still requests access to the remaining withheld information for her own closure.

Having considered the representations of the appellant and the Police, I find that, in the circumstances, disclosure of the remaining personal information in the records which relate to the deceased only, is desirable for compassionate reasons and that all the requirements for the application of section 14(4)(c) have been satisfied. Accordingly, I will order the following withheld personal information about the deceased to be disclosed to the appellant:

- pages 2 and 13 of the Sudden Death Report
- pages 4 and 5 of Officer #2's notes
- pages 2 and 3 of Officer #3's notes

Personal information of other individuals

The Police submit that the remaining withheld information contains the personal information of other identifiable individuals who have not consented to the disclosure of their personal information. I also gave notice to the affected persons during my inquiry in this appeal, and I did not get the consent of the affected persons to the disclosure of their personal information.

In Order MO-2237, Assistant Commissioner Brian Beamish applied the exception in section 14(4)(c) to several records which also contained the intermingled personal information of several identifiable individuals, including the deceased daughter of the appellant in that case. He made the following comments on the difficulties in applying section 14(4)(c) in these circumstances:

I have found that parts of records 5, 6 and 11 consist of the personal information of the appellant's daughter. Record 11 also contains the affected party's image, voice and mannerisms, and records 5, 6 and 11 contain information about the affected party's activities where these also involve the appellant's daughter. This information is inextricably intertwined in a way that cannot be fully resolved by severing, and accordingly, these records raise one of the more difficult aspects of applying section 14(4)(c), namely the question of how to treat information that is clearly the personal information of the deceased individual, but, at the same time, is also the personal information of another individual or individuals.

The first question to address here is whether the reference to "personal information about a deceased individual" can include information that also qualifies as that of another individual. In my view, this question should be answered in the affirmative. The circumstances of an individual's death, particularly one that is followed by a police or coroner's investigation, are likely to involve discussions with other individuals that will entail, to a greater or lesser extent, the collection and recording of those individuals' personal information. In my view, an interpretation of this section that excludes any information of a deceased individual on the basis that it also qualifies as the personal information of another individual would be inconsistent with the definition of "personal information", set out above, since the information would clearly qualify as recorded information "about" the deceased individual. It would also frustrate the

obvious legislative intent behind section 14(4)(c), of assisting relatives in coming to terms with the death of a loved one.

In my view, this approach is borne out by the legislative history of section 14(4)(c) (and section 21(4)(d) of the *Freedom of Information and Protection of Privacy Act*, the equivalent section in that statute). Prior to the enactment of this provision, denial of access to information to family members regarding the circumstances of their loved ones' death was often forced upon institutions by the operation of section 14(3). Examples of the kind of information previously withheld include records such as those at issue here and include police occurrence reports, ambulance call reports and 911 call reports [see Orders PO-2473, PO-1757]. This information was previously determined to be exempt from disclosure as an unjustified invasion of the privacy of the deceased because the presumptions of unjustified invasion in section 14(3)(a) (relates to medical history) and/or 14(3)(b) (compiled and identifiable as part of an investigation into a possible violation of law) applied to much of the personal information in these types of records.

After reviewing the history behind the enactment of section 14(4)(c), the Assistant Commissioner went on to comment on its application as follows:

Accordingly, in 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 also information that qualifies as the personal information of not only 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).

As well, the fact that the protection of personal privacy is one of the *Act's* purposes, articulated in section 1(b), must be considered in assessing whether to disclose information that, in addition to being personal information of the deceased, also qualifies as the personal information of another individual or individuals.

Another circumstance to consider is the privacy of the deceased individual. In this regard, it is noteworthy that section 2(2) of the *Act* provides that information about deceased individuals only ceases to be "personal information" after they have been dead for more than thirty years.

I will apply the approach taken by the Assistant Commissioner to the remaining information at issue in this appeal.

I have found above that some of the records remaining at issue contain the personal information of the appellant's daughter and that this information is comingled with that of a number of other identifiable individuals, including the appellant. The remaining withheld information consists primarily of the statements of witnesses to the appellant's daughter's death, or statements from those individuals who were with the deceased in her last moments. All of this information relates to the events that occurred prior to the death of the appellant's daughter. While I agree with the Police that the appellant has been granted access to significant amounts of the Sudden Death Report which set out "where and how" the sudden death occurred, I give significant weight to the appellant's evidence regarding her need to know further details of the circumstances surrounding her daughter's death.

In assessing the relevant circumstances, including the appellant's need to receive the information for closure and to better understand the circumstances around her daughter's death, the privacy interests of the affected persons and the privacy interests of the deceased, I give significant weight to the fact that much of the deceased's personal information in these records includes the affected persons' observations and statements about the deceased prior to her death.

I also give some weight to the representations of the Police and the affected persons. In particular I have considered the one affected persons' concerns for his safety should his identity and statement be disclosed. That being said, I have found that address and contact information of the affected persons was not the personal information of the appellant or the deceased and have found it exempt under section 38(b), subject to the Police's exercise of discretion discussed below.

Having considered all the circumstances around this appeal, including the representations received from all parties, I find that disclosure of the remaining information in the records is in the circumstances, desirable for compassionate reasons. Accordingly, I find that the exception in section 14(4)(c) applies to the remaining information withheld in Sudden Death Report and police officer's notes, as their disclosure would not result in an unjustified invasion of personal privacy, within the meaning of section 14(1)(f). Accordingly, the records whose disclosure is

desirable for compassionate reasons which contain the personal information of the appellant's daughter are not exempt under section 14(1), and any such records which also contain the personal information of other identifiable individuals are not exempt under section 14(1), with the exception of the contact information for these individuals.

EXERCISE OF DISCRETION

I will now consider whether the Police exercised their discretion under section 38(b) in a proper manner concerning the personal information in the Sudden Death Report and police officers' notes that I have found should be withheld by reason of section 14(3)(b). I note for the purposes of this discussion that this information is primarily the names, addresses, phone numbers and dates of birth of the affected persons.

The section 38(b) exemption is discretionary, and permits an institution to disclose information despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

In addition, the Commissioner may find that the institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose
- it takes into account irrelevant considerations
- it fails to take into account relevant considerations

In either case, this office may send the matter back to the institution for an exercise of discretion based on proper considerations [Order MO-1573]. This office may not, however, substitute its own discretion for that of the institution [section 43(2)].

The Police submitted that it considered the purpose of the section 38(b) exemption, the nature of the information requested, the fact that the privacy of the affected persons should be protected, and that individuals should have a right of access to their own personal information. Considering all these factors, and weighing the interests of the appellant against those of the affected persons, the Police exercised its discretion to withhold the information at issue.

I find that the Police exercised their discretion in a proper manner, taking into account relevant considerations and not taking into account irrelevant consideration. The appellant is not otherwise aware of this information which is significant and sensitive personal information of other identifiable individuals other than the appellant and the deceased. Therefore, I uphold the Police's exercise of discretion, concerning this information.

ORDER:

1. I order the Police to disclose to the appellant, the portions of the records which I have found should be disclosed, set out in the copy of the records that accompanies this order. For sake of clarity, I have highlighted the portions of the records that should **not** be disclosed to the appellant. The information that is not highlighted should be disclosed by **July 24, 2009** but not before **July 17, 2009**.
2. I uphold the Police's decision to withhold access to the remaining information in the records.
3. In order to verify compliance with this order, I reserve the right to require the Police to provide me with a copy of the records disclosed pursuant to order provision 1.

Original Signed By: _____

June 16, 2009 _____

Stephanie Haly
Adjudicator