



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER MO-2420**

## **Appeal MA08-210**

### **Peel Regional Police Services Board**



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## **NATURE OF THE APPEAL:**

The Peel Regional Police (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) from the parents of a named individual. The requesters sought access to copies of all video and still photographs of the location of the motor vehicle accident where their son was killed as a result of another individual's drunk driving.

The Police issued a decision letter providing partial access to the records requested. The letter stated that the responsive records consisted of 89 photographs and that access was granted to 82 of them. The photographs that were disclosed contained images of the accident scene, including the vehicle in which the appellants' son was travelling. The seven withheld photographs contained images of the appellants' son. The letter also stated that a video recording of the accident site had not been produced, and therefore no video could be provided. With respect to the seven photographs that had been withheld, the decision letter stated that access had been denied pursuant to the mandatory exemption at section 14 of the *Act* (personal privacy), taken in conjunction with the factor at section 14(2)(f) and the presumption in section 14(3)(b).

The requesters (now the appellants) appealed the Police decision to deny access to the remaining seven photographs. In their letter of appeal, the appellants acknowledged that the photographs may be graphic, but stated that they wanted access to the last images of their son.

During mediation, the mediator had discussions with both the appellants and the Police with a view to clarifying the positions of both parties and to attempt a resolution of the appeal. The Mediator discussed recent amendments to the *Act*, and the possible application of the exception contained in section 14(4)(c) in the circumstances of this appeal. However, further mediation was unsuccessful in resolving any issues, and this appeal was moved to the adjudication stage of the inquiry process.

I commenced my inquiry by issuing a Notice of Inquiry, seeking representations from the Police. I received representations from the Police, who agreed to share their representations with the appellant. I then issued a second Notice of Inquiry to the appellants, in which I sought their representations and enclosed the representations of the Police. In their representations, the appellants stated that they no longer wished to make use of the photographs for a public anti-drunk driving initiative, which they had previously discussed with the Police. I then asked the Police to reconsider their position on access since the public dissemination of the photographs by the appellants was one of the reasons they gave for denying access to the photographs. In response, the Police stated that they maintain their position denying access to the photographs.

## **RECORDS REMAINING AT ISSUE:**

The records consist of seven photographs containing the image of the appellants' deceased son taken at the accident site where he was killed.

## **DISCUSSION:**

### **PERSONAL INFORMATION**

The Police rely on the personal privacy exemption in section 14(1) as the basis for denying access to all undisclosed records. This exemption can only apply to records containing “personal information”, as defined in section 2(1) of the *Act*, so I will consider this requirement first.

“Personal information” is defined, in part, to mean recorded information about an identifiable individual, including information relating to the race, nationality, age, sex, or marital or family status of the individual (paragraph (a)) and information relating to the medical, psychiatric or psychological history of the individual (paragraph (b)).

I have examined the seven photographs at issue and find that they each contain the personal information of the appellants’ deceased son, as defined in section 2(1). The appellants’ son is clearly identifiable in the photographs. From the photographs, personal information about him is clearly available relating to his race, sex and medical status. The photographs do not contain any personal information of other individuals.

### **PERSONAL PRIVACY**

Having found that the photographs are the personal information of the appellants’ deceased son as defined in section 2(1) of the *Act*, I will now consider whether this information is exempt from disclosure under section 14(1).

Where a requester seeks personal information of another individual, section 14(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 14(1) applies. If the information fits within any of the paragraphs of (a) to (f) of section 14(1), it is not exempt from disclosure under section 14(1). In the circumstances of this appeal, section 14(1)(f) is relevant. That provision reads:

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

- (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

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. Once established, a presumed unjustified invasion of personal privacy under section 14(3) can only be overcome if section 14(4) or the “public interest override” at section 16 applies. [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767].

If none of the presumptions in section 14(3) apply, the institution must consider the application of the factors listed in section 14(2), as well as other considerations that are relevant in the

circumstances of the case. If a presumption listed in section 14(3) has been established, it cannot be rebutted by either one or a combination of the factors set out in section 14(2).

Section 14(4) refers to certain types of information whose disclosure *does not* constitute an unjustified invasion of personal privacy and is relevant to this appeal. That section 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 a spouse or close relative of the deceased individual, and the disclosure is desirable for compassionate reasons.

Based on the wording of this provision, a finding that the exemption in section 14(4)(c) applies to the personal information in this appeal means that the disclosure of that information would not be an unjustified invasion of personal privacy.

#### **Section 14(4)(c)**

I applied section 14(4)(c) for the first time in Order MO-2237. In determining the scope of the section, I reviewed the relevant legislative history. Having considered the legislative history, I came to the following conclusion regarding its application:

...by using the words “in the circumstances” the Legislature intended that a broad and all encompassing approach be taken to the consideration by this office of whether or not disclosure is “desirable for compassionate reasons.” In my view, by enacting this amendment to the *Act*, the Legislature intended to address an identified gap in the access to information legislation and increase the amount of information being provided to bereaved family members. ***It is recognized that, for surviving family members, greater knowledge of the circumstances of their loved one’s death is by its very nature compassionate.*** [Emphasis added]

I will again adopt this approach in determining whether the information remaining at issue should be disclosed to the father of the deceased individual.

#### ***Steps to follow in applying section 14(4)(c)***

In Order MO-2237, I determined that the application of this section requires a consideration of the following questions, all of which must be answered in the affirmative 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 desirable for compassionate reasons, in the circumstances of the request?

*Step 1 – Personal Information of the Deceased*

As stated above, I have found that the information in the photographs at issue in this appeal constitute the personal information of the deceased individual. 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* as follows:

“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 appellants are the parents of the deceased individual whose personal information is contained in the records at issue, and therefore they are close relatives as defined in the *Act*. I find that the second requirement for the application of section 14(4)(c) is satisfied.

*Step 3– Desirable for Compassionate Reasons*

**Representations**

In their representations, the Police take the position that the appellants seek access to the photographs of their son in order to provide the photographs to MADD Canada. MADD Canada is a charitable organization committed to stopping impaired driving. One of its aims is to heighten awareness about the dangers of drinking and driving. The Police state that the appellants intend the photographs to be used for MADD’s educational presentations at schools. In this regard, the Police state:

The Peel Regional Police have confirmed with M.A.D.D. Canada that this organization will not show photographs of a deceased individual to students or the public in general. Rather, they are interested in photographs of a crash scene.

Within this context, the Police state:

It is our position that section 14(4)(c) of the *Act* is inapplicable under the circumstances as the Appellant’s overriding intent is to obtain the photographs for public dissemination. The Peel Regional Police are concerned that such a release of graphic photographs of a deceased is contrary to the public interest and the privacy interests of the deceased individual. It is our submission that disclosure in this case is not desirable for compassionate reasons.

The representations of the Police review previous orders of this office that have considered the application of section 14(4)(c). In this regard, the Police state:

We recognize that decisions emanating from the Information and Privacy Commissioner of Ontario have determined that this subsection should be given a broad and all encompassing interpretation. Greater knowledge by close family members of the circumstances surrounding a loved one's death is by nature compassionate. Nevertheless, in our submission, the request of the Appellant to obtain possession of the graphic photographs of his son's death goes beyond the purpose of this section.

...

In the present Appeal, we have knowledge of the Appellant's intent with respect to the possession of the photographs. We submit that the public interest and the personal privacy of the deceased individual would support the position that section 14(4)(c) is not applicable.

In their representations, the appellants confirm that the photos were originally intended to support a presentation to high school students on the dangers of drinking and driving. In their letter of appeal to this office, the appellants state:

The importance of us obtaining these photographs cannot be underestimated...[we] also believe that lives will be saved by this for it is the teenage segment of the motoring population that account for the majority of drinking-and-driving offences and fatalities.

While the appellants clearly would have no objections to the photographs being used for educational purposes, in their representations they state:

To allay the concerns of the Peel Police, we would receive the photos with the clear understanding that no photos showing our son will be used in any MADD presentation, nor will we attempt to ask them to use them in this way.

In addition to the potential use of the photographs for educational purposes, the appellants take the position that disclosure of the photographs to them will assist in bringing closure to their son's death. In their appeal letter to this office, they state:

Also, these are the last images of [named deceased individual] that were ever taken and, regardless of their woeful nature, they will help us acknowledge and cope with his passing.

This sentiment is reiterated in the representations provided by the appellants:

What we are requesting now is that, in keeping with the spirit and intent of both Section 14(4)(c) of the governing *Act* and with the ruling MO-2237 of the

Commissioner, we are seeking a ruling for all photos of the crash to be released to us on compassionate grounds. These are the last photos of our son and, difficult as they are to see, they will provide us with closure.

Having received the representations of the appellant, I decided to forward them to the Police, noting that the appellants had changed their position on the public dissemination of the photographs and giving the Police an opportunity to reconsider their position on the request. The Police responded that they maintain their original position of refusing to provide the photographs to the appellants.

### *Analysis and Finding*

Since 1999, this office has been advocating for greater disclosure to close family members of information about the deaths of loved ones. The reasons for this are outlined in great detail in Order MO-2237, and I will not repeat them here, with one exception. I note the support for this office's position taken by two professional psychologists and their comment that:

Particularly, in the case of trauma, denial of factual information surrounding a loved one's death often tortures the survivor as they struggle to derive some sense of purpose and meaning in such a horrific experience. Understanding the nature and extent of the deceased injuries, how the death occurred, and the level of consciousness and pain felt has the potential to palliate the survivor's anguish.

As noted by the Police in their representations, this office has taken a broad approach in the determination of whether or not disclosure of information at issue is "desirable for compassionate purposes." I will continue to apply that approach here.

Order MO-2245 dealt with a similar set of circumstances in that a parent was requesting access to photographs taken by police at the scene where the body of her deceased son was found. I stated:

...I give significant weight to the appellant's submission that disclosure of the records will help her with the grieving process. As noted by the appellant, she did not have the opportunity to view her son in the state in which he was found. The videotape and photographs will provide her with this opportunity and bring closure to any questions she may still have regarding this part of his death. The videotape and photographs also show articles found at the site that may assist her understanding of her son's death. If the appellant would like to see her son in his natural deceased state in order to help her with the grieving process, she should be allowed that opportunity. Losing a loved one is a sad and difficult process. Section 14(4)(c) of the *Act* was designed to allow families to have the records they feel they require in order to grieve in the way they choose.

The position of the Police that the release of the photographs would not reduce the suffering of the appellant, but rather would add more distress and sorrow to her suffering is, in my view, misguided. The appellant has clearly indicated a desire

to view the photographs and the videotape in order to gain a better understanding of her son's untimely death. She will be aware that these images are graphic. This is clearly spelled out in the representations submitted by the Police and shared with the appellant. Having been informed that disclosure of the videotape and photographs may be upsetting and disturbing, in my view the appellant is in the best position to determine whether disclosure is in her interests. In general, institutions may have an obligation to inform spouses and close family members of the nature of the information they have requested under section 14(4)(c); for example if it is particularly graphic or disturbing. However, having provided that advice, it does not then rest with an institution to make decisions on behalf of that grieving spouse or relative as to whether disclosure is in *their* best interests. A well-informed adult can make that decision on their own behalf.

With the enactment of this section, the Legislature has recognized a special group of requesters, namely the spouses and close relative of deceased individuals. Institutions have been directed to very specific criteria when considering disclosure to this group as compared to "disclosure to the world." In this case, the Police have not recognized the clear intent of the Legislature.

I accept the submissions of the appellants as grieving parents that access to the photographs taken of their son after the tragic accident that resulted in his death would bring closure to them. In both their letter of appeal to this office, and their representations, they take the position that possession of the last photographs taken of their son would provide them comfort and closure. I note that they also are clearly aware that the photographs are graphic in nature. Further, based on the circumstances of this case, I agree with the position taken by the appellants that the police decision to deny parents access to the photographs of their child on the basis that this would constitute a violation of the child's privacy is not supportable. In my view, disclosure of the photographs of the appellants' son is desirable for compassionate reasons and all the requirements for the application of section 14(4)(c) have been satisfied.

The Police based their decision to deny access to the records on the appellants' original intention of using the photographs for the purpose of public education. Given that the appellants' representations indicate that the photographs would no longer be used for this purpose, it is not necessary for me to determine whether this was an appropriate basis for denying access. However, in the interests of completeness, I will address this issue.

With respect, I disagree with the position taken by the Police. In their representations, the appellants provide cogent reasons why the use of the photographs to help educate young people and prevent deaths similar to their son's would have assisted them in coming to terms with his death and provided some meaning to this tragedy. In circumstances such as this, disclosure of personal information of deceased individuals may well be desirable for compassionate reasons. Family members, in consultation with experienced organizations such as MADD, may determine that the use of the personal information of a deceased loved one, including photographs, may be effective and appropriate for educating the public. The provision of such public education may assist the family members in bringing closure to the death, making the disclosure of the personal



information desirable for compassionate purposes. In my view, having considered the representations of the appellants, this was such a case.

I am therefore satisfied that disclosure of the records to the appellants is desirable for compassionate reasons and that all the requirements for the application of the section 14(4)(c) have been satisfied. Accordingly, I find that the disclosure of the seven remaining photographs would not give rise to an unjustified invasion of the deceased's personal privacy under section 14(1), and the exception to the exemption provided by section 14(1)(f) applies. Accordingly, the exemption at section 14(1) does not apply and the records ought to be disclosed to the appellants.

**ORDER:**

1. I order the Police to disclose the records at issue to the appellants by sending a copy to them on or before **June 26, 2009**
2. In order to verify compliance with provision 1, I reserve the right to require the Police to provide me with a copy of the records that were disclosed to the appellants.

Original signed by: \_\_\_\_\_  
Brian Beamish  
Assistant Commissioner

\_\_\_\_\_ May 22, 2009