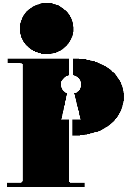

ORDER MO-2533

Appeal MA09-273

The Greater Sudbury Police Services Board

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NATURE OF THE APPEAL:

The Greater Sudbury Police Services Board (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (*MFIPPA* or the *Act*) for access to documents relating to the sudden death of the requester's daughter. The requester stated that she was making the request for compassionate reasons.

Having located the records responsive to the request, the Police notified five affected parties. Two of those affected parties (affected party 1 and 2) responded to the notice by stating that they did not consent to the disclosure of any of their personal information contained in the records. The other three affected parties did not respond to the Police. The Police issued a decision letter identifying 64 pages of responsive records. The Police denied access to some of the records and granted access in full and in part to others.

Pages 8-10, 12, 14, 16, 38, 40-43, 53, 60 and 63-64 were disclosed in full. Pages 1-7, 11, 13, 15, 17-21, 24-28, 39, 44-48, 56-59 and 61-62 were denied in part. Pages 22-23, 29-37, 49-52 and 54-55 were denied in full.

In support of their position that the withheld information is exempt, the Police relied on section 38(a) (discretion to refuse requester's information) in conjunction with section 8(2)(a) (law enforcement), and section 38(b) (personal privacy).

The requester, now the appellant, appealed the decision to this office.

Mediation was commenced in an attempt to resolve the issues in the appeal. During mediation, the appellant clarified that she was not seeking access to the names, birth dates, addresses, phone numbers, license plate numbers or other numeric identifiers of any of the individuals referred to in the records. She also confirmed that she is not seeking access to pages 3, 7, 11, 13, 15, 17, 19, 39 and 58. The records remaining at issue in this appeal are set out in the table below.

In view of the fact that the requester stated that she had made the request for compassionate reasons, the mediator asked the Police to consider the possible application of section 14(4)(c) in making their decision. However, the Police took the position that section 14(4)(c) did not apply.

As no further mediation was possible, this file was moved to the adjudication stage of the appeal process where an adjudicator conducts an inquiry under the *Act*. I began my inquiry by issuing a Notice of Inquiry inviting the Police to submit representations on the facts and issues set out in the notice. I received representations from the Police, portions of which are confidential.

I then issued a modified Notice of Inquiry to the appellant inviting her to submit representations, and enclosed the non-confidential portions of the Police's representations. I also issued a Notice of Inquiry to the five affected parties who had previously been notified by the Police, inviting them to submit representations on the facts and issues set out in the notice. I provided these affected parties with a copy of the Police's representations. I received representations from the appellant, but not from the affected parties.

RECORDS:

As shown in the chart of records below, the records at issue consist of occurrence reports, supplementary occurrence reports, the homicide/sudden death report and witness statements prepared as a consequence of the Police investigation into the sudden death of the appellant's daughter.

Page Number	Description	Withheld/Disclosed	Exemption Claimed
1-2	Occurrence Summary Report	Withheld in part	38(a) and 8(2)(a); 38(b) and 14(1)(f)
4-5	Homicide/Sudden Death Report	Withheld in part	38(1) and 8(2)(a); 38(b) and 14(1)(f)
6	Supplementary Occurrence Report	Withheld in part	38(a) and 8(2)(a); 38(b) and 14(1)(f)
18	Witness Statement	Withheld in part	38(a) and 8(2)(a); 38(b) and 14(1)(f)
20-21	Witness Statement	Withheld in part	38(a) and 8(2)(a); 38(b) and 14(1)(f)
22-23	Witness Statement	Withheld in full	38(a) and 8(2)(a); 38(b) and 14(1)(f)
24-28	Witness Statement	Withheld in part	38(a) and 8(2)(a); 38(b) and 14(1)(f)
29-34	Witness Statement	Withheld in full	38(a) and 8(2)(a); 38(b) and 14(1)(f)
35	Witness Statement	Withheld in full	38(a) and 8(2)(a); 38(b) and 14(1)(f)
36-37	Witness Statement	Withheld in full	38(a) and 8(2)(a); 38(b) and 14(1)(f)
44-48	Witness Statement	Withheld in part	38(a) and 8(2)(a); 38(b) and 14(1)(f)
49-52	Witness Statement	Withheld in full	38(a) and 8(2)(a); 38(b) and 14(1)(f)
54-55	Witness Statement	Withheld in full	38(a) and 8(2)(a); 38(b) and 14(1)(f)
56-57	Witness Statement	Withheld in part	38(a) and 8(2)(a); 38(b) and 14(1)(f)
59	Witness Statement	Withheld in part	38(a) and 8(2)(a); 38(b) and 14(1)(f)
61	Witness Statement	Withheld in part	38(a) and 8(2)(a); 38(b) and 14(1)(f)
62	Witness Statement	Withheld in part	38(a) and 8(2)(a); 38(b) and 14(1)(f)

DISCUSSION:

PERSONAL INFORMATION

In order to determine which sections of the *Act* may apply, it is necessary to decide whether the records contain "personal information" and, if so, to whom it relates. "Personal information" is defined in section 2(1) of the *Act*.

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). To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed [Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.)].

Representations

The Police state that all of the records include information that qualifies as personal information although they do not specify to whom that information relates.

With respect to the issue of whether the information at issue is reasonably identifiable, the Police submit that, despite the fact that the affected parties names and contact details are to be severed from the records, as agreed upon at mediation, the disclosure of their witness statements would reveal the identities of these individuals by virtue of their "presence and relationship with the deceased."

The appellant's representations address the issue of whether the information is reasonably identifiable only. She states:

> It appears to me the determination of whether or not information is to be disclosed should be evaluated on its bare substance. i.e.
>
> - Would the information, written on a page (with the names, addresses, identifying marks, etc removed), in itself, disclose identity? and not
> - Would the information identify the individual to a particular Requester?
>
> Which to me, would be the evaluation of the Requester or the evaluation of the "speculated knowledge of the Requester not the evaluation of the information itself." I believe this could lead to subjective rather than objective application of the *Act*.
>
> …
>
> That said, further to the representation of the institution at Absurd Result, and to speak to the reality of this situation, [the Police are] fully aware that I do already have knowledge of the identity of the individuals involved. *I personally spoke*

> *with some of these persons (who shared with me the identity of others) and immediately notified [the Police] of this information. I question why the institution is pretending that access to this information would disclose identity to me.*
>
> [Emphasis added]

Analysis and Findings

I find that pages 1-2 (occurrence summary report) 4-5 (homicide/sudden death report), 54-55, 56-57, 59 and 62 (witness statements) contain information relating to the appellant that qualifies as her personal information as that term is defined in section 2(1) of the *Act*. The other records do not contain the appellant's personal information.

In addition, I find that all of the records contain the personal information of the appellant's daughter who is now deceased. This includes her name as it appears with other personal information about her, the views of opinions of witnesses about her and other information that would also qualify as personal information.

I also find that all of the records contain the personal information of other affected parties. This personal information includes their names, birth dates, addresses and other contact details and their personal opinions or views, except as they relate to other individuals.

However, as noted above, the appellant states that she is not seeking access to the names, contact details and other personal identifiers of these individuals. I will therefore not order that this information be disclosed as it is no longer responsive to the request. I have removed this personal information from the scope of the appeal, and have identified the places in the records where it appears. These portions are highlighted in a copy of the records provided to the Police with this order, and they are not to be disclosed.

As stated above, in order to qualify as personal information, and to be potentially subject to the personal privacy exemptions in sections 14(1) and 38(b) of the *Act*, the information must relate to "identifiable" individuals. According to the Divisional Court in *Ontario (Attorney General) v. Pascoe* [see *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)* (2001), 154 O.A.C. 97 (Div. Ct.), upheld by the Court of Appeal at [2002] O.J. No. 4300 (C.A.)], the test is whether "there is a reasonable expectation that, when the information in [the record] is combined with information from sources otherwise available, the individual can be identified."

The Divisional Court also stated:

> A person is also identifiable from a record where he or she could be identified by those familiar with the particular circumstances or events contained in the records. See Order P-316 and Order P-651.

I have considered the appellant's position that the records do not contain the personal information of the affected parties once their names and identifiers are removed. In view of the findings of the Divisional Court, as affirmed by the Court of Appeal, I must reject the appellant's

suggestion that her knowledge of the circumstances and of the parties involved should not be considered in assessing whether their information is reasonably identifiable.

Following *Ontario (Attorney General) v. Pascoe*, I must determine if it reasonable to expect that the affected parties may be identifiable from any of the information that remains in the records once names and contact details of the affected parties have been severed, having regard to the information and knowledge that the appellant has about the surrounding circumstances and the individuals involved.

I have carefully reviewed all of the records at issue. In the circumstances of this appeal, I find that the records all contain information which qualifies as the personal information of the affected parties since these individuals are identifiable from the records even if names and contact details are severed. In fact, the affected parties are well known to the appellant and, as she confirms, some of their names were provided by her to the Police. The records themselves contain richly detailed information about the circumstances of the death and other contextual information about the personal circumstances of the affected parties which would serve to identify them. For all of these reasons, I find that, despite the severance of names and contact details, disclosure of these records will reveal the identity of the affected individuals. I will consider below whether this personal information is exempt from disclosure under sections 14(1) and 38(b).

In addition, I find that the information that qualifies as the personal information of the deceased in the records is inextricably intertwined with the personal information of the affected parties so that it is not possible to sever the personal information of the affected parties from the records in a way that would allow only the disclosure of the deceased's personal information.

PERSONAL PRIVACY

General principles

As I have found that some of the records contain the personal information of the appellant, the appellant's right of access to these records is determined under Part II of the *Act*. The appellant's right of access to the remaining records which contain only the personal information of individuals other than the appellant will be determined under Part I of *Act*.

Under Part II, Section 36(1) gives individuals a general right of access to their own personal information held by an institution. Section 38 provides a number of exemptions from this right.

Section 38(b) provides that where a record contains the personal information of both the requester and another individual, and disclosure of the information *would* constitute an "unjustified invasion" of the other 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 affected party's 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.

Under Part I of the *Act*, section 14 provides that where a record contains the personal information only of an individual other than the requester, the institution must refuse to disclose that information unless disclosure *would not* constitute an "unjustified invasion of personal privacy".

In both these situations, sections 14(1) to (4) provide guidance in determining whether the unjustified invasion of personal privacy threshold is met. The factors and presumptions in sections 14(2), (3) and (4) help in determining whether disclosure would or would not be an unjustified invasion of privacy under section 14(1)(f).

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 sections 14 or 38(b). 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]. I now turn to consider whether the presumption in section 14(3)(b), which has been claimed by the Police, applies to the records at issue.

Section 14(3)(b)

Section 14(3)(b) states:

> A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,
>
> > (b) 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;

Even if no criminal proceedings were commenced against any individuals, section 14(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of law [Orders P-242 and MO-2235]. The presumption can also apply to records created as part of a law enforcement investigation where charges are subsequently withdrawn [Orders MO-2213, PO-1849 and PO-2608].

Representations

The Police state that section 14(3)(b) applies because the records were compiled and are identifiable as part of an investigation into a possible violation of law. They also state that section 38(b) gives them the discretion to deny access to the information about the requester and the discretion to deny access to opinions, comments and other information about her deceased daughter.

With respect to the application of section 14(1), the appellant disputes that the information of any of the affected parties is their personal information, an issue that I have addressed above. She does not submit representations relating to the application of section 14(3)(b) as she is of the

view that even if it does apply, it is overcome by the application of section 14(4)(c) in this appeal. I will address the appellant's arguments regarding section 14(4)(c) below.

Analysis and Findings

I have carefully reviewed the records and I find that the presumption in section 14(3)(b) applies to them as they were all clearly compiled and are identifiable as part of an investigation into a possible violation of law. As a result, unless section 14(4) or section 16 applies, the disclosure of the personal information of individuals other than the requester is presumed to be an unjustified invasion of privacy.

Before I turn to consider the possible application of section 14(4)(c), I want to comment on the representations submitted by the Police regarding the appellant's right to her own personal information under section 38(b). To be clear, section 38(b) does not give the Police the discretion to deny the appellant access to information that is solely the personal information of the appellant. Consequently, the appellant's personal information that is capable of being severed from the personal information of other individuals is not exempt under section 38(b).

14(4)(c) – compassionate reasons

If any of paragraphs (a) to (c) of section 14(4) apply, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under sections 14 or 38(b). I now turn to consider the possible application of section 14(4)(c) which the appellant claims applies in the circumstances of this appeal. Section 14(4)(c) states:

> (4) Despite subsection (3), a disclosure does not constitute an unjustified invasion of personal privacy if it,
>
> (c) 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.

The term "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; ("proche parent"); and

Previous orders have found that the application of section 14(4)(c) 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?

[Orders MO-2237 and MO-2245]

Personal information about a deceased individual can include information that also qualifies as that of another individual. Where this is the case, the "circumstances" to be considered would include the fact that the personal information of the deceased is also the personal information of another individual or individuals. The factors and circumstances referred to in section 14(2) may provide assistance in this regard, but the overall circumstances must be considered and weighed in any application of section 14(4)(c) (Order MO-2237).

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 is to determine whether, "in the circumstances, disclosure is desirable for compassionate reasons" (Order MO-2245).

Representations

Although the Police concede that parts 1 and 2 of the test for the application of section 14(4)(c) have been met, they state that they are not satisfied that the disclosure of personal information relating to the deceased and the affected parties is desirable for compassionate reasons.

The Police state that the factors favouring privacy in sections 21(2)(f), (h) and (i) apply to the personal information of the affected parties. Those sections state:

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

(f) the personal information is highly sensitive;

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

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

With respect to the factors in section 14(2), the Police submit that none of the factors favouring disclosure of the information of the affected parties apply. Regarding the factors that favour privacy protection, they state the following:

- Section 14(2)(f) applies as the statements provided by the affected parties during the investigation are highly sensitive.
- Section 14(2)(i) applies, as disclosure may unfairly damage the reputation of individuals referred to in the records. The Police also submitted confidential representations in support of this factor that I am unable to refer to here.
- Section 14(2)(h) applies because the information was supplied to the Police by the affected parties in confidence.

The appellant argues that section 14(4)(c) applies. In support, she provided this office with a copy of a newspaper article from "The Sudbury Star" which, in part, purports to chronicle her struggle to understand the circumstances surrounding her daughter's death. In her representations, she states:

> I ask in circumstances such as this, what mother would not desire this information to help her in the grieving process?

The appellant did not submit any representations regarding factors in section 14(2) that might favour disclosure. With respect to the factors that favour privacy, the appellant submits:

- Section 14(2)(f) requires that there must be a reasonable expectation of "significant personal distress."
- She appears to dispute that assurances of confidentiality were given and that disclosure would "unfairly" damage the reputation of any person referred to in the record.

As noted above, the affected parties did not submit representations in response to the Notice of Inquiry that was provided to them. However, affected parties 1 and 2 did correspond with the Police at the request stage of the process and stated that they objected to the disclosure of their personal information to the appellant.

Analysis and Findings

I found above that all of the records contain the personal information of the deceased. I also find that the appellant, who is the mother of the deceased, falls within the definition of "close relative" as defined in section 2(1). Therefore, I agree with the Police that the first two parts of the test for the application of section 14(4)(c) have been met in this appeal. The remaining issue that I must determine is whether disclosure of the personal information of the appellant's daughter is desirable for compassionate reasons, in the circumstances of this request.

In Order MO-2237, following my review of the legislative history of section 14(4)(c), I came to the following conclusion:

> …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.] [See also Orders MO-2245 and MO-2387.]

In Order MO-2237, I found that the personal information about the deceased in that appeal was mixed with information that also qualified as the personal information of an affected party. As noted above, I stated that where this is the case, the "circumstances" to be considered would include the fact that the personal information of the deceased is also the personal information of an affected party and that the factors and circumstances referred to in section 21(2) may provide assistance in this regard. Ultimately, however, the overall circumstances must be considered and weighed in any application of section 14(4)(c).

This approach has been adopted in a number of other orders of this office, including Orders MO-2245 and MO-2387. I intend to follow a similar approach here. The findings in Order MO-2237 are significant given that the Police in this appeal dispute that the disclosure of the information requested by the appellant is desirable for compassionate reasons. As well, the records at issue in this appeal include personal information which I have found to be the mixed personal information of the appellant's daughter and the affected parties.

Each of these records contains narrative descriptions of the events that led to the death of the appellant's daughter, including the involvement of the affected parties. Details are also provided about the police investigation into the death. In fact, these records were created specifically to investigate the circumstances surrounding the death of the appellant's daughter and therefore contain a great deal of detail, including personal information relating primarily to her, but also to the affected parties.

Having carefully considered the records, and the circumstances of this case, I am satisfied that the disclosure of the personal information contained in these records to the appellant would be desirable for compassionate reasons. The records describe the circumstances surrounding the death of her daughter and record the events leading up to it. The disclosure of this information will provide the appellant with a great deal of information about her daughter's death which may be helpful to her in achieving some degree of closure about these tragic circumstances, as contemplated by section 14(4)(c).

While some of the information is comprised of the personal information of the affected parties, intertwined with the personal information of the deceased, I find that the need to ensure that the appellant is well-informed about the circumstances surrounding the death of her daughter outweighs the affected parties' concerns about privacy.

In arriving at this conclusion, I have carefully considered the representations submitted by the Police regarding the factors in section 21(2) that, in their view, favour privacy protection. As set out above, in an appeal involving the application of section 14(4)(c), these factors provide assistance in weighing the overall circumstances of the case. I have considered their position regarding the sensitive nature of the information in the records that touches on all of the parties, including the appellant, and the fact that this information was provided in the context of a law enforcement investigation. I have also considered that, although none of the affected parties submitted representations in this appeal, two of those parties advised the Police that they objected to the disclosure of their information to the appellant. In addition, I have taken into account the fact that the Police concluded at the end of their investigation that no foul play was involved in relation to the death of the appellant's daughter.

Similar to Order MO-2237, I have also considered the appellant's well-founded belief that the information disclosed to her to date has not provided her with clarity regarding the circumstances of death. This is a very significant factor favouring the application of section 14(4)(c).

Having regard to the purpose of section 14(4)(c), the nature of the information contained in the records, and the appellant's stated need for closure in the grieving process, in addition to the other circumstances of this appeal, I find that disclosure of the deceased's personal information to the appellant is "in the circumstances, desirable for compassionate reasons." This includes personal information of the deceased that is mixed with that of the affected parties. Accordingly, I find that section 14(4)(c) applies to all of the information at issue in this appeal, and for that reason, the disclosure of the records does not constitute an unjustified invasion of privacy.

Therefore, the records are not exempt under section 14(1) or 38(b). This leaves the issue of whether the records are exempt under section 8(2)(a), on its own or in conjunction with section 38(a).

RIGHT OF ACCESS TO ONE'S OWN PERSONAL INFORMATION/LAW ENFORCEMENT

As noted above, section 36(1) gives individuals a general right of access to their own personal information held by an institution. Section 38 provides a number of exemptions from this right.

Section 38(a) reads:

> A head may refuse to disclose to the individual to whom the information relates personal information,
>
> > if section 6, 7, 8, 8.1, 8.2, 9, 10, 11, 12, 13 or 15 would apply to the disclosure of that personal information.

Section 38(a) of the *Act* recognizes the special nature of requests for one's own personal information and the desire of the legislature to give institutions the power to grant requesters access to their personal information (Order M-352).

In this case, the institution relies on section 38(a) in conjunction with section 8(2)(a). However, I have found above, that not all of the records contain the personal information of the appellant and therefore, in relation to those records, the sole issue is whether the records are exempt under section 8(2)(a). In either case, I must consider whether all of the records meet the criteria for the application of section 8(2)(a).

Section 8(2)(a) states:

> (2) A head may refuse to disclose a record,
>
> > (a) that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law;

The term "law enforcement" is used in several parts of section 8, and is defined in section 2(1) as follows:

> "law enforcement" means,
>
> > (a) policing,
> >
> > (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, or
> >
> > (c) the conduct of proceedings referred to in clause (b)

Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context [*Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.)].

In order for a record to qualify for exemption under section 8(2)(a) of the *Act*, the institution must satisfy each part of the following three-part test:

1. the record must be a report; and

2. the report must have been prepared in the course of law enforcement, inspections or investigations; and

3. the report must have been prepared by an agency which has the function of enforcing and regulating compliance with a law.

[Orders 200 and P-324]

The word "report" means "a formal statement or account of the results of the collation and consideration of information". Generally, results would not include mere observations or recordings of fact (Orders P-200, MO-1238, MO-1337-I). The title of a document is not determinative of whether it is a report, although it may be relevant to the issue (Order MO-1337-I).

Section 8(2)(a) exempts "a report prepared in the course of law enforcement *by an agency which has the function of enforcing and regulating compliance with a law*" (emphasis added), rather than simply exempting a "law enforcement report." This wording is not seen elsewhere in the *Act* and supports a strict reading of the exemption (Order PO-2751). An overly broad interpretation of the word "report" could create an absurdity. If "report" means "a statement made by a person" or "something that gives information", all information prepared by a law enforcement agency would be exempt, rendering sections 8(1) and 8(2)(b) through (d) superfluous (Order MO-1238).

Representations

The Police argue that all of the records at issue qualify as a report under section 8(2)(a) as they represent "detailed accounts of all the information" which are compiled to form a report and they were prepared by the Police in the course of their investigation into the sudden death. They also state that none of the exceptions in section 8 apply.

The appellant cites Order PO-2040 and states that it is not sufficient for an institution to take the position that the harms under section 8 are self evident from the record (Order PO-2040). She also suggests that the word "report" should not be given an "overly broad interpretation" citing Order MO-1238.

Analysis and Findings

As the records at issue were compiled as part of a Police investigation into a possible violation of the *Criminal Code*, I am satisfied they were prepared in the course of law enforcement by an agency which has the function of enforcing and regulating compliance with a law as required by parts two and three of the test for the application of section 8(2)(a) (Orders M-202 and PO-2085).

The issue before me here is whether the records at issue which consist of occurrence reports, a sudden death report and witness statements, qualify as a "report" within the meaning of section 8(2)(a).

Generally, and despite the appearance of the word "report" in document names, occurrence reports and similar records of other police agencies have been found not to meet the definition of "report" under the *Act* (set out in detail above), in that they are more in the nature of recordings of fact than formal, evaluative accounts of investigations: see, for example, Orders PO-1796, P-1618, MO-2361, MO-2290, M-1120 and M-1141. In Order M-1109, former Assistant Commissioner Tom Mitchinson made the following comments about police occurrence reports:

> An occurrence report is a form document routinely completed by police officers as part of the criminal investigation process. This particular Occurrence Report consists primarily of descriptive information provided by the appellant to a police officer about the alleged assault, and does not constitute a "report".

I agree with this approach and adopt it here. Having reviewed the occurrence reports, sudden death reports and the witness statements at issue in this appeal, I am satisfied that they do not meet the definition of a "report" under the *Act*, in that they consist of observations and recordings of fact rather than formal, evaluative accounts. It is significant that the content of these records is descriptive and not evaluative in nature. In other words, the records are not "formal statements or accounts of the results of the collation and consideration of information."

Similar findings have been made in previous orders in relation to sudden death reports. These records are similar to occurrence reports in that they contain observations and recordings of fact rather than formal evaluative accounts. For these very reasons, previous orders of this office have found that sudden death reports do not qualify as reports for the purposes of section 8(2)(a) of the *Act*: see for example, Orders MO-2005 and MO-1912. I agree with the approach taken in these orders and having reviewed the sudden death reports, I also find that they cannot accurately be described as "reports" for the purposes of section 8(2)(a). Even if I accept the argument that these records contain "detailed accounts of information" gathered by the Police, that would not be sufficient to support a finding that these types of records are "reports" since they do not include "the results of the collation and consideration of information."

For these reasons, I find that the section 8(2)(a) does not apply, and consequently, none of the records are exempt under section 8(2)(a) or under section 38(a) in conjunction with section 8(2)(a). In view of these findings, and the findings above in relation to sections 38(b) and 14(1), it is not necessary for me to review the Police's exercise of discretion in relation to sections 38(a) and 38(b).

Having found that none of the responsive information in the records is exempt, I will order that the responsive portions of the records be disclosed to the appellant in my order provisions that follow.

ORDER:

1. I order the Police to disclose to the appellant the responsive portions of the records that I have found not to be exempt. For the sake of clarity, I have highlighted the portions of the records in the duplicate copy of the records enclosed with this order that should **not** be disclosed. The information that is not highlighted is to be disclosed.

2. I order the Police to disclose the records in compliance with provision 1 of this order by **July 29, 2010**, but not earlier than **July 23, 2010**.

Original Signed By: June 24, 2010
Brian Beamish
Assistant Commissioner