

Information and Privacy Commissioner,  
Ontario, Canada



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

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## **ORDER PO-3169**

Appeal PA11-312

Ministry of the Attorney General

February 27, 2013

**Summary:** The appellants sought access to SIU investigative records relating to a fatal incident in which their son was involved. The Ministry of the Attorney General identified the records in the SIU investigative file and the SIU director's report as responsive, and granted partial access to them. Access was denied pursuant to the discretionary law enforcement exemption at section 14(2)(a) (law enforcement report) and the mandatory personal privacy exemption at section 21(1) of the *Act*. The exemption for law enforcement reports was found to apply to the SIU director's report while the remaining records were found not to be "reports" for the purposes of section 14(2)(a) of the *Act*. Some of the records were found not to contain personal information and therefore, the exemption at section 21(1) cannot apply to them. The disclosure of remaining records was presumed to be an unjustified invasion of personal privacy within the meaning of the section 21(3)(b) as they were compiled as part of an investigation into a possible violation of law. However, the exception in section 21(4)(d) was found to rebut the presumption to permit the disclosure of some of the records as disclosure is desirable for compassionate reasons. The ministry's decision was upheld in part and it was ordered to disclose some records to the appellants.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, ss. 2(1), 14(2)(a), 21(1), 21(3)(b), 21(4)(d).

**Orders Considered:** P-1315, P-1418, PO-1819, PO-1959, MO-2237, MO-2245, PO-2412, PO-1524, and PO-2821.

## **OVERVIEW:**

[1] The appellants submitted a request to the Ministry of the Attorney General (the ministry) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for the complete Special Investigations Unit (SIU) file relating to a fatal incident involving their son.

[2] The ministry located the responsive records and issued an access decision granting partial access to them. Access was denied to most of the records, including SIU follow-up reports, correspondence and police documents, pursuant to the exemptions at section 14(2)(a) (law enforcement report), and section 21(1) (personal privacy), read in conjunction with the presumption at section 21(3)(b) (investigation into violation of law) of the *Act*.

[3] The appellants appealed the ministry's decision to deny access to the records.

[4] During mediation, the appellants confirmed that they wish to pursue access to the records that were withheld but advised that they are not interested in obtaining any witnesses' names or contact information. Specifically, at the end of mediation, the appellants advised that they were seeking access to all of the information remaining at issue with the exception of records 95, 106, and 107 which contain witness information. Accordingly, these records are no longer at issue.

[5] As the appeal was not resolved during mediation, it was transferred to the adjudication stage of the appeal process. During the inquiry into this appeal I sought representations from the ministry and the appellants. Both parties submitted representations.

[6] For the reasons that follow, I have upheld the ministry's decision in part. I have found that section 14(2) applies to one record. I have found some records do not contain the personal information of any identifiable individuals. Also, I have ordered the ministry to disclose some records to the appellants as it is desirable for compassionate reasons.

## **RECORDS:**

[7] The records that remain at issue (with the exception of record 5) form part of the SIU investigative brief for the incident involving the appellants' son. Some of the records have been withheld in part while others have been withheld in their entirety. Specifically, the records at issue are the following:

- Records 1, 1a, 1b – Intake form
- Record 2 – Case closure/Notification form
- Record 4 – Cover letter to Chief

- Record 5 – Director’s report
- Records 7, 7a, 10, 10a, 11, 11a, 12-17, 19, 21 – SIU follow-up reports
- Records 22-33 – SIU Designation forms
- Records 34, 36-38, 45-47 – Correspondence to/from the Toronto Police Service
- Records 35, 43 and 44 – Correspondence to/from the Ontario Provincial Police
- Record 39 – Letter from SIU to Regional Supervising Coroner
- Record 40 – Letter from SIU to Office of the Chief Coroner
- Record 41 – Letter from SIU to City Taxi
- Record 42 – Letter from SIU to Consulate General of Romania
- Record 49 – SIU email
- Records 50-68 – Police agency documents
- Records 69-80 – Police notes
- Record 81 – SIU working file content
- Record 86 – Google map
- Records 88-90 – Fingerprints
- Records 91, 93 – Passport document authentication
- Record 92 – Photocopies of passport pages and permanent resident card
- Record 94 – Vehicle and personal identification cards
- Record 96 – Documents list
- Records 97, 97a – Personal documents and identification
- Records 100-104 – Diagrams
- Record 105 – City Taxi transaction record
- Records 108-109 – Transmittal and receipt forms
- Record 110 – FIS folder label
- Record 111 – Medical Certificate of Death
- Record 112 – Report of post-mortem examination
- Record 113-118 – SIU investigator’s notes
- Record 121 – CD Ontario Provincial Police COMM
- Record 122 – CD Ontario Provincial Police witness call
- Record 123 – CD Toronto Police Service COMM
- Records 124 – CD Toronto Police Service FIS photos
- Record 125 – CD Romanian fingerprint verification
- Record 126 – CD SIU autopsy and exhibit photos
- Record 127 – CD contents of thumb drive
- Record 128 – CD Civilian and police witness audio statements
- Record 129 – DVD Toronto Police Service interview
- Record 130 – DVD from thumb drive
- Record 131 – DVD Ministry of Transportation video clip of cycled images
- Record 132 – DVD Toronto Police Service in-car video
- Record 133-138 – DVDs Toronto Police Service

## **ISSUES:**

- A. Does the discretionary exemption at section 14(2)(a) of the *Act* apply to the records at issue?
- B. Should the ministry's exercise of discretion under section 14(2)(a) be upheld?
- C. Do the records contain "personal information" as defined in section 2(1) of the *Act* and, if so, to whom does it relate?
- D. Does the mandatory exemption at section 21(1) of the *Act* apply to the records at issue?

## **DISCUSSION:**

### **A: Does the discretionary exemption at section 14(2)(a) apply to the records?**

#### ***General principles***

[8] Section 14(2)(a) states:

A head may refuse to disclose a record,

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;

[9] The term "law enforcement" is used in section 14(2)(a), 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).

[10] The term "law enforcement" has been found to apply in the following circumstances:

- a police investigation into a possible violation of the *Criminal Code*.<sup>1</sup>

[11] The term "law enforcement" has been found *not* to apply in the following circumstances:

- a Coroner's investigation or inquest under the *Coroner's Act*, which lacked the power to impose sanctions.<sup>2</sup>

[12] Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context.<sup>3</sup>

[13] It is not sufficient for an institution to take the position that the harms under section 14 are self-evident from the record or that a continuing law enforcement matter constitutes a *per se* fulfilment of the requirements of the exemption.<sup>4</sup>

***Section 14(2)(a): law enforcement report***

[14] In order for a record to qualify for exemption under section 14(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.<sup>5</sup>

[15] 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.<sup>6</sup>

[16] The title of a document is not determinative of whether it is a report, although it may be relevant to the issue.<sup>7</sup>

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<sup>1</sup> Orders M-202, PO-2085.

<sup>2</sup> Order P-1117.

<sup>3</sup> *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).

<sup>4</sup> Order PO-2040; *Ontario (Attorney General) v. Fineberg*.

<sup>5</sup> Orders 200 and P-324.

<sup>6</sup> Orders P-200, MO-1238, MO-1337-I.

[17] Section 14(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.<sup>8</sup>

[18] 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 14(1) and 14(2)(b) through (d) superfluous.<sup>9</sup>

### ***Representations***

[19] The ministry submits that record 5, which is the director's report to the Attorney General, and all of the other records at issue, which comprise the SIU investigative brief, are exempt from disclosure pursuant to section 14(2)(a) of the *Act*.

[20] As noted above, in order for a record to qualify for exemption under section 14(2)(a) of the *Act*, each part of a three-part test must be satisfied. With regards to the first part, the ministry submits that record 5, the director's report on its own, and all of the remaining records taken together as the SIU investigative brief, each constitute a "formal statement or account of the results of the collation and consideration of information." It submits that they "provide an overview of the incident and a description of the events prior to, during, and subsequent to the incident that was investigated."

[21] The ministry provides further details about the nature of the records. First, addressing those that make up the investigative brief:

The records that comprise the investigative brief, in this and other SIU investigations, form an integral part of the director's report. The ministry submits that the materials that comprise the investigative brief are indeed more than "mere observations or recordings of fact." Rather, the investigative brief, in the language of Commissioner Wright, is better described as a "formal statement" of the results of the investigation, as well as an "account of the results of the collation and consideration of information."

[22] Second, addressing record 5, the director's report, the ministry submits:

It should also be noted that section 113(8) of the *PSA* [*Police Services Act*] requires the director of the SIU to provide the Attorney General with

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<sup>7</sup> Orders MO-1238, MO-1337-I.

<sup>8</sup> Order PO-2751.

<sup>9</sup> Order MO-1238.

a report of the result of investigations. The director's report satisfies this reporting requirement. It reports the result of the investigation based upon the director's review of the investigative brief. Within this framework, the ministry submits that the director's report and investigative brief considered together comprise a formal statement of the result of the collation and consideration of information and that, consequently, the information contained in these records constitutes a "report" for purposes of part 1 of the section 14(2)(a) test.

[23] Addressing part 2 of the test which requires the report to have been prepared in the course of law enforcement, inspections or investigation, the ministry submits that the SIU is created by section 113 of the *PSA* which charges it with the investigation of "the circumstances of serious injuries and deaths that may have resulted from criminal offences committed by police officers."

[24] Finally, with respect to part 3, the ministry submits that:

[T]he SIU's statutory regime and the creation of the investigative brief and Director's Report in the discharge of the SIU mandate, establish that the records that comprise the investigative brief and the director's report are prepared, as in the instant case, in the course of law enforcement investigations by an agency which has the function of enforcing and regulating compliance with the law, namely, the criminal law.

[25] The ministry points to Orders P-1418 and P-1315 which support its representations however, it acknowledges that there exists conflicting authority in this area and points to Orders PO-1819, PO-1959, PO-2412 and PO-2524.

[26] The appellants focus on the fact that the exemption in section 14(2)(a) is discretionary. They submit that the records at issue fit into four categories:

- Personal documents of our deceased son, which are not under any exemption.
- Documents containing evidence, measurements, expert appraisements, minutes, witnesses' statements, Coroner's Report, postmortem autopsy report, toxicology report, etc. These may be classified according to the chronological unfolding: prior, during and after the incident.
- After analyzing the evidence and information gathered by the police officers and by the SIU investigators, résumés of the investigation are drafted...These résumés are collected and correlated, forming a base for the final résumé. The documents containing evidence, the résumés of the SIU investigators and the final investigative résumé are compiled in a file

are presented to the SIU Director, who analyzes them and issues the final decision. This is how we understand the unfolding of an investigation.

- From the moment when the final decision is presented to the mass media, it becomes official, both for the public at large and for us, as family of the deceased.

[27] The appellants further submit “that this does not mean that all the personal documents of our son, the ones containing evidence and the investigative SIU files are considered SIU reports.” Specifically, they point to records 86 (a Google map), 110 (FIS folder label), and 111 (medical certificate of death) and question why they fall under the section 14(2)(a) exemption.

[28] The appellants conclude their representations stating:

[T]he documents do not contain the investigative résumés. The investigative résumés are analyzed based on the documents containing evidence and comprise observations and conclusion regarding them. The documents containing evidence and the investigative résumés are not parts of the report of the SIU director. This report was drafted and the decision was issued on the basis of information contained in them.

### ***Analysis and finding***

[29] Previous decisions of this office have addressed the application of section 14(2)(a) to records compiled by the SIU in the course of an investigation undertaken pursuant to section 113 of the *PSA*.<sup>10</sup> Most of these appeals are similar to this one in that they involve a significant number of records that when taken together reflect the entirety of the SIU’s investigation.

[30] Earlier orders, such as Orders P-1315 and P-1418 relied upon by the ministry, concluded that the entirety of the SIU file should be construed to constitute a “report” for the purpose of section 14(2)(a). However, more recent orders have departed from this approach. In Order PO-1959, Adjudicator Sherry Liang rejected the ministry’s position in that appeal that based on Orders P-1315 and P-1418 the entire SIU file should qualify as a “report” for the purposes of section 14(2)(a). She stated:

Essentially, the ministry’s submission is that all of the records must be considered together for the purposes of the application of section 14(2)(a). I am unable to accept this submission, and I find that section 14(2)(a) requires consideration of whether *each* record at issue falls within that exemption. The ministry has enclosed copies of two prior

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<sup>10</sup> Orders P-1315, P-1418, P-1819, PO-1959, PO-2414, PO-2524, PO-2821, PO-2854, and PO-2976.



orders of this office in support of its position. In Order P-1315, it appears that a group of records described as the SIU's final investigative report, and which included witness statements, expert reports, summaries of forensic testing and other evidence gathered in the course of the police investigation into an accident, was considered as one record and found as a whole to constitute a 'report' for the purposes of section 14(2)(a). A similar approach was applied in Order P-1418. More recently, however, in Order PO-1819, section 14(2)(a) was applied to each record which formed part of the SIU investigation file.

On my reading of these orders, it is clear that even in Order P-1315, there were a large number of records in the SIU investigation file which were considered separately by the adjudicator for the purposes of section 14(2)(a). Some of these records, such as interview notes, a motor vehicle accident report and vehicle examination and damage report, are similar to those before me which the ministry asserts form part of an overall SIU 'investigation brief.'

Order P-1418 is less easily reconciled with Order PO-1819, and with the approach I have taken in this order. I am satisfied that, if there is any inconsistency between the approaches in some of the orders in this area, the analysis in PO-1819 is more in keeping with the intent of this section in the *Act*. Although I find that Record 2 (the Report of the Director) meets the requirements of section 14(2)(a), it does not follow that all the material which may have been gathered together, placed before and considered by the Director before arriving at his conclusions is also exempt, without further analysis. In this respect, I agree with the appellant that section 14(2)(a) does not provide a 'blanket exemption' covering all records which the Ministry views as constituting part of the SIU's 'investigative brief.'

In the case before me, the SIU investigation file consists of numerous different records from diverse sources. As the representations of the ministry describe, they are essentially a compilation of information obtained during the course of the SIU's investigation and the steps taken by SIU staff in the discharge of that investigative jurisdiction, and include documentary materials obtained by the SIU or generated by the SIU. The Director's decision is based on a review of all the records, but his analysis and decision is contained in Record 2 (the Director's Report) alone

I accept, and it is not seriously disputed by the appellant, that Record 2 qualifies as a 'report' for the purposes of section 14(2)(a), in that it consists of a formal statement of the results of the collation and consideration of information. I also find that Record 4, the cover letter to

Record 2, qualifies for exemption, as the two records together can reasonably be viewed as forming the report to the Attorney General from the SIU director.

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I find that none of the remaining records at issue meet the definition of a 'report.' To elaborate further on some of these, Records 15, 19, 23 to 27, and 29 to 37 consist of either Sarnia Police Service incident reports, supplementary reports, or excerpts from police officers' notebooks. Generally, occurrence reports and similar records of other police agencies have been found not to meet the definition of 'report' under the *Act*, in that they are more in the nature of records of fact than formal, evaluative accounts of investigations: see for instance, Order PO-1796, P-1618, M-1341, M-1141 and M-1120. In Order M-1109, 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.'

On my review of the incident reports, supplementary reports and police officers' notes at issue in this appeal, I am satisfied that they also 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. The content of these records is descriptive and not evaluative in nature.

[31] In Order PO-2524, Adjudicator Steven Faughnan addressed the same argument posited by the ministry, again relying on Orders P-1315 and P-1418, in relation to the entire contents of an SIU investigative file. Adjudicator Faughnan affirmed the view of this office that the records at issue in such appeals should be looked at individually as to whether or not they qualify for exemption under section 14(2)(a) or other provisions of the *Act*.

[32] As found by Adjudicator Liang in Order PO-1959, subsequent orders that have examined the records making up an SIU investigative file individually, have also found that director's reports prepared for the Attorney General (and, in some circumstances, other investigative documents that consist of "a formal statement of the result of the

collation and consideration of information”) qualify for exemption under section 14(2)(a).<sup>11</sup>

[33] I agree with the reasoning expressed by Adjudicator Liang in Order PO-1959, and the subsequent orders that have followed it, including Order PO-2524 issued by Adjudicator Faughnan, and adopt it for the purposes of this appeal.

[34] Turning to the records at issue in this appeal, having reviewed them on an individual basis, I accept that record 5 is the report of the director of the SIU to the Attorney General pursuant to the *PSA*, and that its contents amount to “a formal statement of the result of the collation and consideration of information,” namely, the documents compiled during the SIU’s investigation and form part of the SIU investigative brief. In keeping with prior orders, I find that the SIU director’s report, qualifies as a “report” prepared in the course of law enforcement for the purposes of section 14(2)(a). Therefore, subject to my review of the ministry’s exercise of discretion below, record 5 qualifies for exemption under section 14(2)(a) of the *Act*.

[35] However, with respect to the remaining records at issue, I find that none of them amount to a “formal statement of the result of the collection and consideration of information” and therefore cannot be considered a “report” as required for the application of the exemption at section 14(2)(a).

**B. Should the ministry’s exercise of discretion under section 14(2)(a) be upheld?**

[36] The exemption at section 14(2)(a) is discretionary, and permits the ministry to disclose the SIU director’s report, despite the fact that the exemption applies. An institution must exercise its discretion. On appeal, this office may review the institution’s decision in order to determine whether it exercised its discretion and, if so, to determine whether it erred in doing so.

[37] This office may find that the ministry erred in exercising its discretion to withhold the director’s report 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.

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<sup>11</sup> Orders PO-2414, PO-2852, and PO-2854.

[38] In any of these cases, this office may send the matter back to the institution for an exercise of discretion based on proper considerations.<sup>12</sup> However, this office may not substitute its own discretion for that of the institution.<sup>13</sup>

[39] In exercising its discretion under section 14(2)(a), the ministry submits that it considered the fact that the record contains a collation and consideration of information collected in the course of the investigation upon which a final determination regarding the potential criminal liability of the involved officers was based.

[40] The appellant's representations on the ministry's exercise of discretion do not specifically address the ministry discretion to claim section 14(2)(a) to the SIU director's report.

[41] Based on the circumstances of this appeal, the content of record 5 and the representations of the parties, I am satisfied that the ministry exercised its discretion to deny access to the SIU director's report in a proper manner, taking into account relevant considerations. Accordingly, I uphold the ministry's exercise of discretion and I find that record 5 is exempt from disclosure pursuant to section 14(2)(a).

**C. Do the records contain "personal information" as defined in section 2(1) of the *Act* and, if so, to whom does it relate?**

[42] The ministry submits that all of the withheld information is also exempt pursuant to section 21(1) of the *Act*. It submits that disclosure would constitute an unjustified invasion of privacy as the information contains the personal information of individuals other than the appellants that was obtained as part of an investigation into a possible violation of law.

[43] In order to determine whether section 21(1) 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

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<sup>12</sup> Order MO-1573.

<sup>13</sup> Section 54(2) of the *Act*.

financial transactions in which the individual has been involved,

- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except if they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual, and
- (h) the individual's name where 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;

[44] 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.<sup>14</sup>

[45] Section 2(3) also relates to the definition of personal information. This section states:

Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.

[46] To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual.<sup>15</sup>

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<sup>14</sup> Order 11.

<sup>15</sup> Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

[47] Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual.<sup>16</sup>

[48] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.<sup>17</sup>

### ***Representations***

[49] The ministry submits that the records that make up the SIU investigative brief contain personal information that relates to individuals other than the appellants. These individuals include the appellant's deceased son, various police officers involved in the incident and the subsequent SIU investigation, a number of civilian witnesses who were interviewed during the course of the investigation, and other persons involved in the investigation.

[50] Specifically, the ministry submits that the personal information of these identifiable individuals falls within the definition of that term in section 2(1), including information relating to their age and sex [paragraph (a)], medical and employment histories [paragraph (b)], addresses, telephone numbers, and fingerprints [paragraph (d)], the personal opinions or views of the witnesses, not related to the appellant [paragraph (e) and (g)], correspondence sent to the institution that is implicitly or explicitly of a private or confidential nature [paragraph (f)], and names of individuals together with other personal information about them or in circumstances where the disclosure of the names would reveal other personal information about the individuals [paragraph (h)].

[51] Addressing any information that might relate to police officers, the ministry submits that none of the information in question is associated with individuals in their professional capacity. It cites Reconsideration Order R-980015 in which Adjudicator Donald Hale stated:

In order for an organization, public or private, to give voice to its views on a subject of interest to it, individuals must be given responsibility for speaking on its behalf. I find that the views which these individuals express take place in the context of their employment responsibilities and are not, accordingly, their personal opinions within the definition of personal information contained in section 2(1)(e) of the *Act*. Nor is the information "about" the individual, for the reasons described above. In my view, the individuals expressing the position of an organization, in the context of a public or private organization, act simply as a conduit

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<sup>16</sup> Orders P-1409, R-980015, PO-2225 and MO-2344.

<sup>17</sup> Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

between the intended recipient of the communication and the organization which they represent. The voice is that of the organization, expressed through its spokesperson, rather than that of the individual delivering the message.

[52] The ministry distinguishes the information in the current appeal from that in Reconsideration Order R-980015 and submits:

The records in question consist largely of information provided by witnesses during the course of a law enforcement investigation of a particular incident. The objective of that investigation was to ascertain whether there were reasonable grounds to believe that the officers that were the focus of the investigation had committed any criminal offences in connection with the matter investigated. As information collected and/or produced for purposes of a criminal investigation, the ministry submits that the information in question was inherently of a personal nature. For example, the officers were not giving voice to their organization when they provided statements of the SIU. Rather, they were expressing their personal recollections, views and opinions with respect to the incident in question. .. [T]his information does not represent the views or opinions of an organization, be it public or private. It is not associated with these witnesses in their employment or professional capacity. Rather, this information is more appropriately characterized as being associated with individuals in their personal capacity and, accordingly, constitutes personal information within the meaning of that term in section 2(1) of the *Act*.

[53] The appellants submit that even if the documents contain "personal information" they are not seeking access to private data about individuals other than their son. However, they dispute the ministry's position that the information provided by the police officers qualifies as personal information. They submit that the police officers, and a taxi driver, who were present at the time of the incident were acting in their professional and official capacities. They submit:

These direct witnesses were not at a picnic and accidentally witnessed the investigation in [named location]. The police officers were on duty when they conducted the pat down search of [name of deceased]. ... The taxi driver was on duty, during his professional activities and in an official capacity. ...

[54] The appellants also submit that information from the police officers and the coroner who attended at the scene after the incident and collected evidence and information is not personal information as they were also acting in their professional and official capacities.

### ***Analysis and finding***

[55] Based on my review of the records at issue, I find that they contain the personal information of the appellants' son and other identifiable individuals including civilian witnesses. I also find that the information in the records relating to the two police officers who were subject to the SIU investigation is their personal information. However, I find that some of the information, in particular that of the police witnesses and other individuals involved in the SIU investigation, amounts to their professional information rather than personal information as these individuals either created the records or provided the information contained in the records in the context of their employment. Additionally, I find that some of the records contain no personal information at all and as the exemption at section 21(1) cannot apply to them, I will order them disclosed.

[56] As set out above, the records at issue were compiled as and formed part of the SIU investigation of the police's interactions with the appellants' son prior to and the actions taken following the incident that resulted in his death. The records contain documents and images that clearly reveal the appellants' son's personal information as defined in section 2(1) including, information relating to his race, national or ethnic origin, colour, age, sex [paragraph (a)], information relating to his educational and employment history [paragraph (b)], identifying numbers assigned to him [paragraph (c)], his address, telephone number, and fingerprints [paragraph (d)], the views or opinions of another individual about the him [paragraph (g)], and the deceased's name where it appears with other personal information relating to him [paragraph (h)]. Therefore, I find that the majority of the records contain information about the appellants' son that meets the definition of "personal information" as they are about him.

[57] Some of the records also contain the personal information of other individuals, specifically, the information provided by two civilian witnesses including the taxi driver. This information includes his race, ethnic origin, colour, age, sex [paragraph (a)], identifying numbers assigned to him [paragraph (c)], his telephone number [paragraph (d)], and his name where it appears with other personal information relating to him [paragraph (h)]. Notably however, pursuant to paragraph (f) of the definition of personal information in section 2(1) of the *Act*, the taxi driver's views or opinions about the deceased, amount to the deceased's personal information, and not his.

[58] In addition, I find that all of the information relating to the two police officers who were the subject of the SIU investigation qualifies as their personal information and not their professional information for the purposes of this appeal. The SIU investigation was an investigation into their conduct. As stated above, even if information relates to an individual in their professional capacity, it may be considered to be personal information if it reveals something of a personal nature about them. Prior orders have held that records relating to an investigation into a police officer's



conduct while on duty reveal something of a personal nature about the officer and, as such, qualify as their "personal information" within the meaning of the *Act*.<sup>18</sup>

[59] Some of the records, however, contain the information of nine other police officers who were involved in the incident, six of whom provided witness statements. All of these officers are clearly identified in the records as witness officers not subject to the SIU's investigation. Additionally, there are records that contain information about individuals who were involved in conducting the SIU investigation. In my view, the activities of the witness officers whose names appear in the records and the individuals involved in conducting the SIU investigation indicate that they were acting strictly in their professional, as opposed to personal, capacities. I find that there was nothing inherently personal about these individuals included in the records that would take the information from the professional to the personal sphere. However, as noted above, all of the records contain the personal information of the appellants' son. On examination of the records, some of the information that I have found to qualify as professional information is so intertwined with the personal information of the appellant's deceased son and that of other individuals that none of it can be removed from the scope of the appeal at this point. Later in this order, in my determination of whether any of this information can be disclosed for compassionate reasons pursuant to section 21(4)(d), I will determine whether it is reasonable to sever the personal information of other individuals from the information provided by the officers in their statements and whether any portions of the police officers' statements can be disclosed.

[60] Finally, I find that some of the records do not contain personal information for the purposes of the *Act*. As only records that contain personal information can qualify for exemption under section 21(1), I find that that following records are not exempt and must be disclosed:

#### Record 110

[61] Record 110 is labeled on the index as "FIS Folder Label." In their representations, the appellants specifically question why this record cannot be disclosed to them. This record is a photocopy of the cover of the file folder for the case and does not contain any personal information belonging to any identifiable individuals. Accordingly, the exemption at section 21(1) cannot apply to it and it must be disclosed.

#### Records 131 to 138 - DVDs

[62] Record 131 is a DVD that contains cycled images taken from cameras at various locations on the highway system, including where the fatal incident involving the deceased occurred. Records 132 to 138 are DVDs of Toronto Police Service in-car videos taken from some of the police cruisers who were called to the scene. None of

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<sup>18</sup> Order PO-2524, PO-2633, and PO-3003.

these records contain the personal information of any identifiable individuals. Accordingly, the exemption at section 21(1) cannot apply to them and they must be disclosed.

[63] With the exception of the records outlined just above, I have found that the majority records at issue contain the personal information of the appellants' son, as well as that of other identifiable individuals. I will now consider whether this information is exempt from disclosure under section 21(1) of the *Act*.

**D. Does the mandatory exemption at section 21(1) of the *Act* apply to the records at issue?**

[64] Once it has been determined that a record contains personal information, section 21(1) prohibits the disclosure of this information except in certain circumstances. Specifically, where a requester seeks the personal information of another individual, section 21(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 21(1) applies.

[65] If the information fits within any of paragraphs (a) to (f) of section 21(1), it is not exempt from disclosure. The section 21(1)(a) to (e) exceptions are relatively straightforward. The section 21(1)(f) exception is more complex, and requires a consideration of additional parts of section 21.

[66] The facts and presumptions in sections 21(2), (3), and (4) help in determining whether disclosure would or would not be an unjustified invasion of personal privacy under section 21(1)(f). If any of paragraphs (a) to (d) of section 21(4) apply, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 21.

***Section 21(1) – exceptions***

[67] In my view, only the exception in section 21(1)(f) has any possible application in the circumstances of this appeal. Section 21(1)(f) reads:

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

if the disclosure does not constitute an unjustified invasion of personal privacy.

***Section 21(3) – presumed invasion of personal privacy***

[68] The ministry submits that because the records at issue were compiled as part of an SIU investigation into a possible violation of law, in this case the *Criminal Code of*

*Canada*, they are subject to the presumption against disclosure in section 21(3)(b), which reads:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where 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.

[69] The ministry states that the SIU's jurisdiction and responsibilities are outlined in section 113 of the *PSA*. It explains:

[The *PSA* establishes] that the SIU is a law enforcement agency which conducts criminal investigations surrounding the circumstances of incidents which fall within its jurisdiction in order to determine whether there are reasonable grounds to believe a criminal offence has been committed by the involved officers, and to lay criminal charges in cases where such evidence is found to exist.

[70] Based on my review of the records at issue, I accept the ministry's position that the personal information in those records was compiled as part of an investigation into a possible violation of law. The records are SIU investigation records that contain personal information compiled and identifiable as part of an investigation into a possible violation of the *Criminal Code of Canada*. Accordingly, I find that its disclosure is presumed to be an unjustified invasion of personal privacy pursuant to section 21(3)(b), subject to the possible application of section 21(4)(d) discussed below.

***Section 21(4)(d) – compassionate reasons***

[71] A presumed unjustified invasion of personal privacy in section 21(3) can be overcome if the personal information is found to fall under section 21(4) of the *Act* or if a finding is made under section 16 of the *Act* that a compelling public interest exists in the disclosure of the records that clearly outweighs the purpose of the section 21 exemption.<sup>19</sup>

[72] Therefore, the principal issue in this appeal is whether, despite the application of the presumption at section 21(3)(b), section 21(4)(d) permits the further disclosure of the appellants' son's personal information which may be intertwined with that of other individuals. Section 21(4)(d) permits the disclosure of personal information about a deceased individual to the spouse or close relative of the individual where it is desirable

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<sup>19</sup> *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767.

for compassionate reasons. Based on the wording of this provision, a finding that section 21(4)(d) applies to some or all of this personal information means that disclosure would *not* be an unjustified invasion of personal privacy.

[73] Section 21(4)(d) 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.

[74] 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;

*Scope of section 21(4)(d)*

[75] I have found that all of the records contain the personal information of the appellants' son while some of them also contain the personal information of other identifiable individuals. In many cases the information is inextricably intertwined in a way that cannot be resolved by severing. As a result, those records raise one of the more difficult aspects of applying section 21(4)(d): the question of how to treat information that is clearly the personal information of an individual other than the deceased. Assistant Commissioner Brian Beamish has analyzed this issue in previous orders, involving records subject to the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)*.<sup>20</sup>

[76] In Order MO-2237, Assistant Commissioner Beamish analyzed section 14(4)(c) of *MFIPPA* which is the equivalent of section 21(4)(d) of the *Act*, and stated:

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 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

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<sup>20</sup> Orders MO-2237, MO-2270, MO-2290, MO-2292, MO-2306, and MO-2387.

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.

...

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.

[77] In my view, the approach taken by Assistant Commissioner Beamish in Order MO-2237 is equally applicable to the case before me, and I will adopt it for the purposes of this appeal.

*Applying section 21(4)(d)*

[78] In Order MO-2237, the Assistant Commissioner articulated a three-part test, which must be considered in order for section 21(4)(d) to apply. The test is as follows:

In my opinion, the application of section 14(4)(c) [the municipal equivalent of section 21(4)(d)] 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?

[79] I adopt the three-part test for the purposes of this appeal.

*Part 1- Personal information of the deceased*

[80] In the circumstances of the present appeal, I have found above that all of the records contain the personal information of the appellants' deceased son. Accordingly, I find that part 1 of the test for the application of section 21(4)(d) has been met.

*Part 2 – Spouse or "close relative"*

[81] I am satisfied that the appellants are the parents of the deceased individual whose personal information is contained in the records at issue. Therefore, I find that they are "close relatives" within the meaning of the definition in section 2(1). Accordingly, I find that part 2 of the test for the application of section 21(4)(d) has been met.

*Part 3 – Desirable for compassionate reasons*

[82] The ministry submits that section 21(4)(d) does not apply to override the presumption at section 21(3)(b) because the records contain the personal information of individuals other than the deceased including various police officers involved in the incident and investigation and several civilian witnesses who were interviewed during the course of the investigation. It submits that section 21(4)(d) only permits the disclosure of personal information about a deceased individual to the spouse or close

relative of that individual where it is desirable for compassionate reasons. Other than the deceased, the appellants do not stand in the necessary relationship with the individuals whose personal information appears in the records. It further submits:

The ministry acknowledges that the records also contain information which is the personal information of the deceased. However, the ministry submits that this information is so amalgamated and interwoven with the personal information of individuals other than the deceased that severance is not reasonably feasible. In order to avoid disclosing information which is properly exempted from disclosure, any such attempt at severance in the circumstances would result in the disclosure of information that is substantially unintelligible and, therefore, meaningless.

[83] The ministry also submits that there are strong policy reasons not to disclose the personal information contained in the records at issue. It submits that it is necessary that an investigative law enforcement agency be able to protect personal information compiled as a component of an investigation into potential criminal conduct to ensure the willingness of witnesses to come forward and provide relevant information. It submits that this concern to maintain the confidentiality of witness statements is shared by police officers and civilians alike. With respect to the particular circumstances of this appeal the ministry submits that none of the witnesses have consented to the release of their information to the appellants and it is the SIU's policy and practice to protect subject officers' statements from being released.

[84] The appellants, on the other hand, argue that the exemption in section 21(4)(d) should apply. They submit that the circumstances of this appeal are of the very type where compassion should be had. The appellants, who reside in Romania, submit that it is very difficult for them to "accept that [their] son, who was physically healthy and had no case of mental illness in his family, left Calgary for Toronto and calmly jumped off a bridge one early morning." In their submissions they urge the ministry to show them compassion and grant them access to more information that might provide answers to some of their questions. They submit that amidst the information that was disclosed to them were 36 pages and a CD containing exhibit photos of clothes he was wearing, his electronic equipment, and his suitcase) but none of the records that they received mentions the personal objects found on him or his personal effects left at the hotel. They indicate that they do not know the approximate time of their son's death or who accessed his laptop while the investigation was still unfolding. They question whose privacy is invaded if they are provided with a Google map of the site of the incident, measurements taken at the scene or images of their son captured on a video camera in a taxi. They question why records 86, 110, and 111, amongst others, are withheld from them as from their descriptions on the index do not appear to contain personal information. Finally, they submit that it is not their intention to invade anyone's privacy but that they only want answers to questions just as any parents in similar circumstances would.

[85] Because section 21(4)(d) can override the presumed unjustified invasion of personal privacy as set out in section 21(3)(b), it raises an issue about the interpretation of the words "desirable for compassionate reasons."

[86] In Order MO-2237, Assistant Commissioner Beamish considered the definition of the word "compassionate" and the intent of the Legislature as follows:

The *Concise Oxford Dictionary, Eighth Edition*, defines "compassionate" as follows: "adj. sympathetic, pitying." Compassion is defined in the *Concise Oxford Dictionary, Eighth Edition*, as follows: " n. pity inclining one to help or be merciful."

I accept these definitions as evidence of the plain and ordinary meaning of the word "compassionate" and adopt it for the purposes of this appeal.

As discussed above, I have concluded that 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 recognition that, for surviving family members, greater knowledge of the circumstances of their loved one's death is by its very nature compassionate.

[87] I agree with Assistant Commissioner Beamish's reasoning and adopt it for the purposes of this appeal.

[88] Also, previous orders issued by this office have addressed the approach that should be taken when disclosing sensitive personal information, under the compassionate circumstances exception in section 21(4)(d) of the *Act* and in section 14(4)(c) of *MFIPPA*. In Order MO-2245, Assistant Commissioner Beamish made the following comments on this issue:

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 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 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.*** [emphasis added]

[89] Later, in that order, the Assistant Commissioner further addresses the police's position that it must protect this "sensitive" information on behalf of the deceased individual and states:

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 interest 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.*** [emphasis added]

[90] I also agree with the Assistant Commissioner's reasoning on this issue and apply to this appeal.

[91] As established by the Assistant Commissioner, a broad and all-encompassing approach should be taken in determining whether disclosure is "desirable for compassionate reasons." In adopting that approach, having considered the circumstances of this case, and having reviewed the records at issue closely, I am satisfied that disclosure of some of the information is desirable for compassionate reasons within the meaning of section 21(4)(d) and would not constitute an unjustified invasion of other individuals' personal privacy.

[92] In assessing the relevant circumstances of this case, I give little weight to the arguments put forward by the ministry. The ministry's primary arguments as to why some information cannot be disclosed to the appellants for compassionate reasons are,

first, that the personal information of their son is so intertwined with the personal information of others that it is not severable, and, second, that it is undesirable for policy reasons as it would cause witnesses to be reluctant to come forward with information. I find that these arguments do not apply to the information that I have ordered disclosed, described below, because in my view it can be severed to remove the personal information of individuals other than the deceased.

[93] On the other hand, I give significant weight to the appellants' submissions that they desire further disclosure in order to assist them in getting a better understanding of the circumstances of their son's death and to help them with the grieving process. As noted by the appellants, while their son's death was identified as a suicide, they had no indication that he was suffering from mental illness or was troubled in any way. It is their hope that additional information will help to answer questions they might have about the incident and bring closure to questions they might have regarding his death. As noted in Order MO-2245, section 21(4)(d) "was designed to allow families to have the records they feel they require in order to grieve in the way they choose."

[94] I acknowledge that among the information that I find should be disclosed pursuant to section 21(4)(d) are sensitive images of the deceased following his death, including photographs taken at the scene and autopsy photographs. The appellants are warned that these images are graphic and they should use their own discretion to determine whether viewing them may be upsetting or disturbing. However, in keeping with the reasoning applied by the Assistant Commissioner in Order MO-2245, neither the ministry, nor this office is "in loco parentis" with respect to the disclosure of such information. In my view, having been warned of the graphic nature of this information, the appellants are in the best position to determine whether viewing these images are in their best interest and would help them in their grieving process.

[95] Accordingly, having considered the representations of both the ministry and the appellant, in my view many of the records can be severed to allow for the disclosure of the personal information of the deceased in certain portions of the records and that this disclosure is desirable for compassionate reasons. I find that all the requirements for the application of the exception in section 21(4)(d) to the general rule against disclosure have been satisfied for these records and, as a result, I find that the disclosure of the following information does not constitute an unjustified invasion of personal privacy and the mandatory exemption at section 21(1) does not apply.

#### Records 1, 1a, and 1b

[96] Records 1, 1a and 1b are Toronto Police Service intake forms that have been partially disclosed. In my view, there is additional information on these forms that can be disclosed to the appellants pursuant to section 21(4)(d). I uphold the ministry's decision to sever the information relating to the officers subject to the SIU investigation and to the civilian witnesses, however, in my view, disclosure of some of the remaining

information in these records, in particular that found in the "brief synopsis" portion of the forms, will provide the appellants with greater information about the circumstances of their son's death. Accordingly, I find that section 21(4)(d) applies to additional information on records 1, 1a, and 1b.

Records 7, 7a, 10, and 10a

[97] Records 7, 7a, 10, and 10a are SIU Follow-Up Reports that consist of the interview statements of two civilian witnesses. Although these statements contain the personal information of the witnesses, in my view, they can be severed to remove the portions that contain personal information and the information that remains is the very type of information that provides narrative context to the incident and may help the appellants in understanding the circumstances of their son's death. Accordingly, I find that disclosure of the civilian witness statements which have been severed to remove their personal information is desirable for compassionate reasons as contemplated by section 21(4)(d).

Records 11, 11a, 12, 13, 14, 15, 15a, and 16

[98] Records 11, 11a, 12, 13, 14, 15, 15a, and 16 are SIU Follow-Up Reports that consist of the interview statements of witness officers, those who were not subject to the SIU investigation. Above, I found that the information provided by witness officers qualifies as their professional information rather than their personal information. These witness officer interviews also contain the personal information of the deceased, and, in some circumstances personal information belonging to civilian witnesses and the officers subject to the SIU investigation. In my view, the interviews can be severed to remove the personal information of others (namely, the subject officers and other identifiable individuals) and the disclosure of the remaining information will help to provide narrative context to the appellants regarding their son's death. As such, I find that the disclosure of the severed witness officer interview statements is desirable for compassionate reasons as contemplated by section 21(4)(d).

Records 55, 64, 65 and 68

[99] Records 55, 64, 65 and 68 are copies of the occurrence report filed with respect to the incident. I have previously found that this occurrence report does not qualify as a "report" for the purposes of the exemption at section 14(2)(a). On review of this record I find it to be severable and the disclosure of some of the remaining information is desirable for compassionate reasons as contemplated by section 21(4)(d) as it may provide the appellants with further information about the fatal incident involving their son that might be helpful to them in achieving some closure with respect to his death.

Records 57 and 86

[100] Records 57 and 86 are copies of a Google map identifying the location of the Consulate General of Romania in Toronto. The map is too dark to be clear and contains handwritten notes identifying the name of a police detective as well as the name of the one of the appellants and her address. Beneath the appellant's name there are two Romanian telephone numbers but it is not clear whether they belong to the appellant. There are also some unidentified handwritten markings on the map that look like names, and some numbers. Although, in my view, the disclosure of this document would not shed any further light on the circumstances surrounding the incident involving the deceased, given that the appellants have specifically identified it in their representations and have questioned why it was not disclosed to them, I find that its disclosure is desirable for compassionate reasons as contemplated by section 21(4)(d). However, I will order the ministry to sever the unidentified handwritten markings as non-responsive to the request and the telephone numbers that cannot be confirmed to belong to the appellants because it is possible that this information is the personal information of another identifiable individual.

Record 59

[101] Record 59 consists of two property reports and the accompanying property receipts identifying the property of the deceased seized both at the scene of the incident and at the hotel where the deceased had rented a room. This record contains only the personal information of the appellant. As it identifies the items that their son had in his possession at the time of and just before his death, in my view this may provide the appellants with further information. Accordingly, I find that record 59 should be disclosed to the appellants for compassionate reasons as contemplated by section 21(4)(d).

Records 69, 70, 71, 72, 73, 74, 75, 76, 77, and 80

[102] Records 69, 70, 71, 72, 73, 74, 75, 76, 77, and 80 are copies of the police notes taken from the notebooks of the witness officers that were not subject to the SIU investigation. These records contain narrative descriptions of events that led up to the appellants' son's death. As with the witness officer interviews, I found that this information is not their personal information but is rather professional information as it was compiled in the course of doing their duties as police officers. While these notes contain a significant amount of personal information relating to the deceased, some of them also contain the personal information of other individuals such as the civilian witness and the two officers subject to the SIU investigation. Having examined these records closely, I find that these notes can be severed to remove the personal information of the individuals other than the appellant. In my view, the disclosure of the remaining portions are desirable for compassionate circumstances as contemplated by section 21(4)(d) as they contain the very type of information that may provide the

appellants with further information about their son's death and may be helpful to them in achieving some degree of closure with respect to this tragic circumstance.

Records 88 and 89

[103] Records 88 and 89 are copies of the deceased's fingerprints. As this information consists of the appellants' son's personal information and does not contain the personal information of any other individuals, I am of the view that this should be disclosed to the appellants pursuant to section 21(4)(d).

Records 91, 92, 93, 94, 97, and 97a

[104] Records 91 and 93 appear to be duplicates and are copies of the deceased's Romanian identity card. The second page of both of these records identifies the deceased's father and mother by name and provides their address in Romania. As this information consists of only the personal information of the deceased and that of the appellants, I find that this should be disclosed to them pursuant to section 21(4)(d).

[105] Record 92 are copies of identification documents belonging to the deceased including two Romanian issued passports and a Canadian permanent resident card.

[106] Record 94 consists of copies of identification relating to the deceased's personal vehicle, including vehicle registration, an interim operator's licence, and vehicle insurance information. Record 94 also includes photocopies of the deceased's health benefits card, public library card, bank cards and banking related information such as transaction receipts.

[107] Record 97 consists of copies of the deceased's social insurance card, other identification cards, copies of pages of an expired passport and another copy of his permanent resident's card.

[108] Record 97a consists of copies of the business cards of other individuals that the deceased had in his possession, receipts, hotel receipts, a certified photograph, several copies of the deceased's curriculum vitae including copies of educational diplomas and certificates, and other documents some of which are duplicates of identification cards found in other records.

[109] Having reviewed this information closely, I find that it consists of the appellants' son's own personal information and does not contain the personal information of others. Although included in the records are copies of a number of business cards of other individuals, I find that this information consists of their professional information and not their personal information. The pages that make up records 91 to 94, 97, and 97a, amount to copies of the documents that the deceased had in his possession, either on his person at the time of his death or with his belongings at the hotel room. In my

view, disclosure of this information to the appellants should be granted for compassionate reasons, and I find that section 21(4)(d) applies.

#### Record 105

[110] Record 105 is a taxi receipt from the night of the incident involving the deceased. This document was provided to the police by the taxi driver, a fact which is noted in handwriting at the top right corner. In my view, if the record is severed to remove the personal information of the taxi driver, the copy of the receipt should be disclosed to the appellants for compassionate reasons as a result of the application of section 21(4)(d).

#### Records 111 and 112

[111] Record 111 is the Medical Certificate of Death and record 112 is the Report of Postmortem Examination. These records consist entirely of the personal information of the appellants' deceased son and, in my view, would provide the appellants with information about their son's death. Accordingly, I find that section 21(4) applies to these records. However, in their representations the appellants state that these were among the records sent to them by the Office of the Chief Coroner. The appellants also attached copies of both of these records, to their representations. As the appellants already have copies of these records, I will not order the ministry to disclose additional copies of these records to the appellant.

#### Record 124 - CD

[112] Record 124 is a CD containing Toronto Police Service forensic photographs. It contains photographs of the scene of the incident, including photographs of the deceased's body, as well as photographs of the hotel room that the deceased was staying in and photographs of his belongings. Record 124 also includes photograph stills of the images recorded by the video cameras in the taxi cab.

[113] The majority of this information does not contain the personal information of any identifiable individuals. Some of the information, such as the photographs of the scene of the incident, the photographs of the deceased's belongings and the photograph stills taken from the videos recorded in the taxi cab which include images of the deceased, consists of the deceased's personal information. In my view, much of this information should be disclosed to the appellants for compassionate reasons pursuant to section 21(4) as it may provide them with additional information about the incident and assist in helping them achieve some closure.

[114] However, some of the video stills taken inside the taxi cab contains images of the taxi driver. I find that this is his personal information and should not be disclosed. Therefore, I will order the ministry to disclose all of the images on record 124, with the

exception of those that contain the personal information of individuals other than the deceased, including all images of the taxi driver.

**[115] The appellants are warned that among the images in record 124 are photographs of the deceased at the scene of the incident that are graphic in nature.**

Records 126 - CD

[116] Record 126 is a CD that contains SIU autopsy photographs and photographs of exhibits. All photographs on this CD have been disclosed with the exception of the photographs taken during the autopsy performed on the deceased. The undisclosed autopsy photographs consist solely of the personal information of the deceased.

[117] As noted above, previous orders have established that although institutions may have an obligation to inform close family members that the nature of the information they have requested is graphic or disturbing, it does not rest with an institution to make decisions on behalf of that grieving relative as to whether disclosure is in *their* best interests as a well-informed adult can make that decision on their own behalf.<sup>21</sup>

[118] Accordingly, in my view, the photographs should be disclosed to the appellants for compassionate reasons pursuant to section 21(4)(d). **However, the appellants are warned that these photographs of the autopsy performed on their son are extremely graphic in nature.**

Records 127 and 130 - CD

[119] Records 127 and 130 contain the contents of thumb drives that were found in the deceased's possession and contain the deceased's personal documents. Record 127 includes electronic copies of the deceased's diplomas, certificates, educational transcripts, identity cards as well as his international driver's licence. Record 127 contains copies of PDF files of forms necessary for applying to the Association of Professional Engineers, Geologists, and Geophysicists of Alberta. Record 130 includes several copies of the deceased's curriculum vitae and cover letters. It also includes professional documents that appear to have been used by the deceased in his employment such as video interviews and presentations, power point presentations and other documents.

[120] The documents on the thumb drives which belonged to the deceased contain either his own personal information or do not contain personal information of other identifiable individuals at all. Moreover, these thumb drives were the property of the deceased prior to his death. I find that the disclosure of this information to the

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<sup>21</sup> Order MO-2245.

appellants is desirable for compassionate reasons pursuant to section 21(4)(d) as it may provide the appellants with additional information that may help to provide them with answers regarding their son's death and help them in their grieving process.

### Conclusion

[121] I am satisfied that the disclosure of the records and portions of records outlined above is desirable for compassionate reasons. In my view, the information that I have ordered disclosed is the very type of information that would assist a grieving family member in understanding the circumstances of the death of a loved one and may help bring closure for them. I have found that, with respect to these records, all the requirements for the application of section 21(4)(d) have been satisfied. Consequently, I find that the disclosure of this information does not constitute an unjustified invasion of personal privacy. Accordingly, the exemption in section 21(1) does not apply to this information and it should be disclosed to the appellants.

[122] With respect to the remaining information that I have not identified above, I find that section 21(4)(d) does not apply and the information should not be disclosed. This is because any personal information belonging to the deceased in these records is so intertwined with the personal information of others and/or the disclosure of the information is not desirable for compassionate reasons as its disclosure would not provide the appellants with additional information about the death of their son. Accordingly, with respect to information that I have not specifically identified above, I uphold the ministry's decision to withhold it.

### **ORDER:**

1. I order the ministry to disclose the information in the following records that I have found is not exempt pursuant to sections 14(2)(a) or 21(1) of the *Act* by **April 4, 2013**. To ensure clarity with respect to the paper records, I have enclosed a copy of the records that are to be disclosed to the appellant. The portions that are highlighted are to be severed.

- Records 1, 1a, and 1b.
- Records 7, 7a, 10, and 10a.
- Records 11, 11a, 12, 13, 14, 15, 15a, and 16.
- Records 55, 64, 65, and 68.
- Records 57 and 86.
- Record 59.
- Records 69, 70, 71, 72, 73, 74, 75, 76, 77, and 80.
- Records 89 and 90.
- Records 91, 92, 93, 94, 97 and 97a.
- Record 105.
- Records 110.



- Records 111 and 112.
  - Record 124 (CD) – with the exception of the images of the taxi driver.
  - Record 126 (CD).
  - Records 127 and 130 (CD).
  - Records 131 to 138 (DVD).
2. I uphold the ministry's decision to withhold the remaining information.
  3. In order to verify compliance with this order, I reserve the right to require the ministry to provide me with a copy of the records that are disclosed to the appellant pursuant to order provision 1.

Original signed by: \_\_\_\_\_  
Catherine Corban  
Adjudicator

\_\_\_\_\_ February 27, 2013