

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3713

Appeals MA18-52 and MA18-376

Peel Regional Police Services Board

December 21, 2018

Summary: The appellant submitted two access requests to the police under the *Municipal Freedom of Information and Protection of Privacy Act* seeking access to records relating to her deceased sister's interactions with the police on four specified dates. The police issued one decision granting access to records in part, and a second decision withholding the other records in full. In both decisions, the police relied on the mandatory personal privacy exemption at section 14(1) of the *Act* to withhold information. On appeal, the adjudicator orders disclosure of additional information to the appellant based on the application of the compassionate grounds exception to section 14(1) found in section 14(4)(c) of the *Act*. The adjudicator also orders the disclosure of information relating to one affected party, pursuant to the written consent obtained from that party.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, ss. 2(1) definition of "personal information," 14(1)(a), 14(1)(f), 14(3)(a), 14(3)(b), and 14(4)(c).

Orders and Investigation Reports Considered: Orders MO-1323, MO-2237, MO-2245, and MO-3465.

OVERVIEW:

[1] The Peel Regional Police Services Board (the police) received two requests under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), which resulted in two separate appeals being filed with this office.

[2] The first request was for access to "occurrence report, witness statements,

photos, weapons, evidence, officer's notes, all tapes" relating to the suicide of a named individual on a specified date.

[3] The police initially issued a decision denying access to the requested records pursuant to section 14(1) (personal privacy) of the *Act*.

[4] The requester, now the appellant, appealed the police's decision to this office resulting in the opening of Appeal MA18-52. In her appeal letter, the appellant identified herself as the sister of the deceased individual and raised the application of section 14(4)(c) (compassionate grounds) of the *Act*.

[5] During the mediation stage of Appeal MA18-52, the mediator advised the police that the appellant was the deceased's sister. With this information in mind, the police issued a supplementary decision letter granting partial access to the records. The police continued to withhold certain information pursuant to section 8(1)(l) (law enforcement), and 14(1) (personal privacy) of the *Act*.

[6] Upon review of the disclosed records, the appellant advised that she was satisfied with the disclosure of photographs and the audio recording of the 911 calls. However, she continued to seek access to withheld information in occurrence reports and officers' handwritten notes.

[7] At the appellant's request, the mediator contacted the affected parties to determine whether they would consent to the disclosure of their personal information in the records. None of the affected parties provided consent.

[8] Following discussions with the mediator, the appellant advised that she continues to seek access to the portions of the records that contain her sister's personal information. This includes information relating to her sister's interactions with the police, including the night prior to her death.

[9] The appellant confirmed that she does not wish to pursue access to the personal information of individuals other than her sister that has been withheld pursuant to section 14(1), nor does she seek access to any non-responsive information in the records or police code information that was withheld pursuant to section 8(1)(l) of the *Act*.¹ As a result, the only information remaining at issue after mediation was her sister's personal information.

[10] No further mediation was possible and Appeal MA18-52 was moved to the adjudication stage of the appeal process, where an adjudicator conducts an inquiry. I began my inquiry by inviting representations from the police. The police provided representations, which were shared with the appellant in accordance with *Practice Direction Number 7* and the IPC's *Code of Procedure*. I then invited the appellant to provide representations in response to the issues set out in the Notice of Inquiry, as

¹ As a result, withheld information from 46 pages of the records responsive to the first request are no longer at issue.

well as in response to the police's representations. I received representations from the appellant.

[11] Shortly after I received the appellant's representations in Appeal MA18-52, Appeal MA18-376 was moved to the adjudication stage. Appeal MA18-376 deals with a related access request that the police received from the same requester, seeking access to "police notes, witness statements, 911 calls and any and all relevant information pertaining to [the requester's deceased sister]... on [three specified dates, one of which had a related occurrence number]."

[12] In response to the appellant's second request, the police located additional records and issued a decision denying access to them in full pursuant to section 14(1) (personal privacy) of the *Act*. Again, the requester appealed the police's decision to this office, thereby becoming the appellant in Appeal MA18-376.

[13] During the mediation stage of Appeal MA18-376, the appellant advised that she was relying on section 14(4)(c) of the *Act* and that she wished to pursue access to any portions of the records that contain her sister's personal information.

[14] The police claimed that they had considered the application of section 14(4)(c) of the *Act* and had decided that this section did not apply on the basis that the records are highly sensitive and are not associated with the death of the appellant's sister. The police also advised that the affected parties had not been notified, since even if they consented to the disclosure of their personal information, the police would continue to withhold the records based on the mandatory personal privacy exemption.

[15] In response, the appellant advised that she wished to pursue access to any portions of the records that contain information that other individuals gave to police about her sister and the incidents. She also advised that she does not seek access to any information which would identify other individuals, such as their names, addresses, phone numbers, and dates of birth, pages of the records that are duplicates, or one blank page that the police advised was non-responsive.²

[16] No further mediation was possible and Appeal MA18-376 was moved to the adjudication stage. I began my inquiry into this appeal by inviting representations from the police, which were shared with the appellant in accordance with *Practice Direction Number 7* and the IPC's *Code of Procedure*. Next, I invited the appellant to provide representations in response to the same issues, as well as in response to the representations submitted by the police.

[17] I notified one affected party in Appeal MA18-376 by sending them a Notice of Inquiry, the non-confidential representations of the police and the appellant,³ and a consent form to complete if they consented to the disclosure of their personal information in the records at issue. In particular, the Notice of Inquiry stated that, "the

² This removed three pages from the scope of Appeal MA18-376.

³ Portions of the representations that would identify the appellant were withheld.

records that implicate the affected party's interests relate to an incident on [the first date given in the request], and consist of an occurrence report and officers' handwritten notes." The affected party provided a signed form consenting to the disclosure of their personal information in those records to the appellant.

[18] I did not notify any other individuals whose interests could be affected by the disclosure of the records in Appeal MA18-376 because the affected parties in Appeal MA18-52 who were contacted at the mediation stage declined to provide consent, and the appellant indicated that she does not wish to pursue access to the personal information of individuals other than her sister.

[19] Given that Appeals MA18-52 and MA18-376 deal with identical parties, similar issues, and similar records, I have decided to dispose of both appeals in this order. For the reasons that follow, I order the police to disclose to the appellant the personal information of her sister and the one affected party who provided consent in the records responsive to both appeals.

RECORDS:

[20] In Appeal MA18-52, there are 14 records (62 pages) remaining at issue, in part, and these consist of occurrence reports and officers' handwritten notes related to the occurrence identified in the request.

[21] In Appeal MA18-376, there are 12 records (39 pages) remaining at issue, and these consist of occurrence reports and officers' handwritten notes related to three specific incidents, as well as three audio recordings.⁴ These records were withheld in full.

ISSUES:

- A. Do the records contain "personal information" as defined in section 2(1) of the *Act* and, if so, to whom does it relate?
- B. Does the mandatory personal privacy exemption at section 14(1) of the *Act* apply to the records at issue?

⁴ The records package provided by the police to this office included two pages that do not appear to be responsive to the appellant's request since they consist of police officer notes for an unrelated occurrence not identified in the appellant's request. These appear to have been included in the records package accidentally. Accordingly, they have been excluded from the discussion in this order.

DISCUSSION:

Issue A: Do the records contain “personal information” as defined in section 2(1) of the *Act* and, if so, to whom does it relate?

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

“personal information” means recorded information about an identifiable individual, including,

(a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,

(b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,

(c) any identifying number, symbol or other particular assigned to the individual,

(d) the address, telephone number, fingerprints or blood type of the individual,

(e) the personal opinions or views of the individual except 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 if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

[23] 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.⁵

⁵ Order 11.

[24] Sections 2(2), (2.1) and (2.2) also relate to the definition of personal information. These sections state:

(2) Personal information does not include information about an individual who has been dead for more than thirty years.

(2.1) 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.

(2.2) For greater certainty, subsection (2.1) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

[25] 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.⁶ 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.⁷ To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.⁸

[26] The enactment of section 2(2) of the *Act* demonstrates that the Legislature turned its mind to the issue of when an individual’s privacy rights in personal information ought to cease, and determined that this should occur 30 years after death.⁹ The corollary is that it represents a clear indication by the Legislature that, until that time, the privacy protections afforded under the *Act* to the personal information of a deceased individual continue.

Representations

[27] For both appeals, the police submit that the records at issue contain personal information relating to the appellant’s sister and other individuals, though the personal information of other individuals is not at issue.

[28] The police submit that the information at issue relates to the appellant’s sister in a personal capacity, specifically with respect to police interactions in which she was investigated and/or apprehended under the *Mental Health Act*. Accordingly, the police submit that the information falls within paragraph (b) of the definition of personal information under section 2(1) of the *Act*.

⁶ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

⁷ Orders P-1409, R-980015, PO-2225 and MO-2344.

⁸ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

⁹ Order M-731.

[29] The police submit that since the appellant's sister died approximately one year ago, the exception to the definition of personal information in section 2(2) of the *Act* does not apply.

[30] The appellant does not provide representations specifically addressing whether the records contain personal information as defined in the *Act*. Her representations for both appeals indicate that she is not interested in obtaining access to information that would identify any other individuals.

Analysis and findings

[31] Based on my review, I find that the records at issue in both appeals contain the personal information of the appellant's sister and that of other individuals. The records do not contain any of the appellant's personal information.

[32] Of note, I find that pages 9 and 10 and tracks 1 and 2 of the audio recording at issue in Appeal MA18-376 do not contain the appellant's sister's personal information. Given that the appellant seeks access to her sister's personal information, these records are not at issue.

[33] In addition, the appellant has advised that she does not seek access to information in the responsive records that could identify individuals other than her sister. Accordingly, the portions of the records containing information that would identify other individuals, such as names, addresses, telephone numbers, and job descriptions, are not at issue (with the exception of the one affected party who provided consent). In some instances, however, information that was obtained from or relates to other individuals may still be at issue. In such cases, I find that the information is no longer "personal information" as defined in the *Act*, as any portions that could identify these individuals have been removed from the information at issue in these appeals.

[34] The information relating to the appellant's sister in track 3 of the audio recording and the remaining written records include her name, age, sex, address, physical description, other individuals' views or opinions about her, and information relating to her medical, psychiatric, and psychological history. This information falls within paragraphs (a), (b), (d), and (g) of the definition of "personal information" in section 2(1) of the *Act*.

[35] The information relating to the affected party who has consented to disclosure of their personal information from records relating to one of the occurrences includes their age, sex, address, telephone number, and name. This information falls within paragraphs (a), (d), and (h) of the definition of "personal information" in section 2(1) of the *Act*.

[36] Since the records contain the personal information of individuals other than the appellant, I must now consider the application of the personal privacy exemption in section 14(1).

Issue B: Does the mandatory personal privacy exemption at section 14(1) of the *Act* apply to the records at issue?

[37] Where a requester seeks personal information of another individual, section 14(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 14(1) applies. The section 14(1)(a) to (e) exceptions are relatively straightforward. The section 14(1)(f) exception, allowing disclosure if it would not be an unjustified invasion of personal privacy, is more complex, and requires a consideration of additional parts of section 14.

[38] Sections 14(2) to (4) provide guidance in determining if disclosure of personal information would result in an unjustified invasion of the personal privacy of the individual to whom the information relates. Section 14(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy. Section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy. Finally, section 14(4) identifies information whose disclosure is not an unjustified invasion of personal privacy.

[39] If none of the presumptions in section 14(3) apply, the police must consider the application of the factors listed in section 14(2), as well as other considerations that are relevant in the circumstances of the case. If a presumption listed in section 14(3) has been established, it cannot be rebutted by either one or a combination of the factors set out in section 14(2).

[40] A presumption can, however, be overcome if the personal information is found to fall under section 14(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 record that clearly outweighs the purpose of the section 14(1) exemption.¹⁰

[41] For the reasons that follow, I find that disclosure of the appellant's sister's personal information in each of the records at issue is desirable for compassionate reasons and, therefore, that its disclosure would not constitute an unjustified invasion of the sister's privacy. I am also satisfied that the personal privacy exemption does not apply to the personal information of one affected party in the records related to one of the occurrences in Appeal MA18-376, because that affected party consented to the disclosure of their personal information.

Section 14(1)(a)-(e) exceptions

[42] The police maintain that the mandatory personal privacy exemption at section 14(1) applies to the personal information in the records and is not subject to any of the exceptions at section 14(1)(a)-(e). In making those submissions, however, the police were not yet aware of the consent obtained from one affected party regarding the records related to one occurrence in Appeal MA17-376.

¹⁰ *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767.

[43] Section 14(1)(a) provides:

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

upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access[.]

[44] For section 14(1)(a) to apply, the consenting party must provide a written consent to the disclosure of his or her personal information in the context of an access request.¹¹ In Appeal MA18-376, one affected party has provided written consent to the disclosure of their personal information in records relating to one of the occurrences. Accordingly, I am satisfied that the mandatory personal privacy exemption does not apply to that individual's personal information in those records. A copy of that consent form will be provided to the police with this order, and I will order the police to apply that written consent to the disclosure of the affected party's personal information.

[45] I agree with the police, and I find, that the remaining exceptions at section 14(1)(b)-(e) are not applicable to the records at issue, and will focus my analysis on the exception at section 14(1)(f). As noted above, sections 14(2), (3) and (4) are relevant to a determination of whether the section 14(1)(f) exception applies.

Section 14(3) presumptions

[46] The police maintain that disclosure of the appellant's sister's personal information in the records at issue would result in an unjustified invasion of personal privacy as contemplated by section 14(1)(f), due to the operation of the presumptions against disclosure at sections 14(3)(a) and 14(3)(b).

14(3)(a): medical, psychiatric or psychological history

[47] The presumption at section 14(3)(a) states:

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

relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;

[48] The police maintain that the records contain references to prior interactions with the appellant's sister in which she was apprehended for treatment or evaluation of a medical nature. In addition, the police submit that there are references to medical information from medical practitioners, as well as related to medical treatment that the sister had received.

[49] The appellant's submissions do not directly address the presumptions in section

¹¹ Order PO-1723.

14(3), though she does indicate that she is aware of three occasions prior to her sister's death when her sister was apprehended by the police under the *Mental Health Act*.

[50] Based on the parties' representations and my review of the records, I find that the written records and audio recording at issue contain personal information relating to the medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation of the appellant's sister that fits within the presumption at section 14(3)(a) of the *Act*. Accordingly, I find that the presumption in section 14(3)(a) applies to each of the records remaining at issue in both appeals.

14(3)(b): investigation into a possible violation of law

[51] The police also maintain that the presumption at section 14(3)(b) applies to all of the records. This presumption states:

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.

[52] With respect to the records at issue in Appeal MA18-52, the police submit that they were created in response to a Sudden Death Investigation that was ultimately concluded to be a suicide. The police refer to Order MO-1323, in which the adjudicator determined that the presumption at section 14(3)(b) applies to records compiled by the police and identifiable as part of an investigation into a possible violation of law, which includes investigations into suicides. The police maintain that while no criminal proceedings were commenced in this case, the records were compiled as part of an investigation into a suicide and therefore fall within the section 14(3)(b) presumption.

[53] With respect to the records at issue in Appeal MA18-376, the police submit that they were created in response to calls for assistance. Again, although no criminal proceedings were commenced, the police submit that the information was compiled as part of an investigation into a possible violation of law. Accordingly, the police submit that disclosure of the information at issue is presumed to be an unjustified invasion of personal privacy that cannot be overcome by the factors at section 14(2).

[54] Based on the parties' representations and my review of the records, and for the following reasons, I am satisfied that the presumption in section 14(3)(b) applies to the records at issue in Appeal MA18-52; however, I find that the presumption does not apply to the records related to the three occurrences at issue in Appeal MA18-376.

[55] The records at issue in Appeal MA18-52 relate to the police's investigation of the appellant's sister's sudden death. Past orders of this office, including Order MO-1323 cited by the police, have determined that police records relating to investigations into

sudden deaths may fit within the presumption at section 14(3)(b).¹² I am satisfied that the information at issue in these records was compiled as part of an investigation into a sudden death and therefore falls within the presumption at section 14(3)(b).

[56] In contrast, the records at issue in Appeal MA18-376 relate to police involvement following calls for assistance. The section 14(3)(b) presumption may apply to these records even if no criminal proceedings were commenced against any individuals. The presumption only requires that there be an investigation into a possible violation of law.¹³

[57] However, past orders have found that the requirements of section 14(3)(b) are not met when the police exercise their authority under the *Mental Health Act*.¹⁴ In Order MO-3465, Adjudicator Hamish Flanagan found that the presumption at section 14(3)(b) did not apply as there was insufficient evidence to establish that the police's involvement was related to an investigation into a possible violation of law. In that order, Adjudicator Flanagan reviewed past decisions and stated:

Order MO-3063 adopted the reasoning in Orders MO-1428 and MO-1384 to find that the requirements of section 14(3)(b) were not met when police apprehended an individual under the *Mental Health Act*. In Order MO-1384, Assistant Commissioner Tom Mitchinson stated:

Section 17 of the *Mental Health Act* does not create an offence for the actions of individuals which may justify the involvement of the Police. The Police have provided no evidence to suggest the appellant's behaviour harmed or threatened to harm any other person. Rather, it would appear that the Police decided to approach the appellant on the basis of possible harm she might inflict on herself. In my view, absent evidence to the contrary, the actions taken by the Police, under the apparent authority of the *Mental Health Act*, do not fall within the scope of section 14(3)(b) because, while involving police officers, the actions do not involve or relate to "a possible violation of law". This situation can be distinguished from investigations undertaken by police services in situations involving a suspicious death, where possible foul play may have occurred. In those circumstance, it is often reasonable for a police service to conclude that there may have been "a possible violation of law", specifically the *Criminal Code* of Canada.

[58] Adjudicator Flanagan found that the police's involvement in the circumstances of Order MO-3465 was focused on the decision of whether to exercise their authority under the *Mental Health Act* as opposed to investigating any possible violation of law.

¹² See also Orders MO-3343 and MO-3069.

¹³ Orders P-242 and MO-2235.

¹⁴ Orders MO-1384, MO-1428, MO-3063, and MO-3465.

[59] I adopt the reasoning in these previous orders, and apply it here.

[60] Having considered the police's representations and the records at issue with regard to each occurrence in Appeal MA18-376, I am not persuaded that the police were investigating potential violations of law. Rather, I find that the police's interactions with the appellant's sister were for the purpose of assessing the sister's well-being and/or determining whether they should take action under the *Mental Health Act*.

[61] Accordingly, I find that section 14(3)(b) does not apply to the records relating to the three occurrences at issue in Appeal MA18-376.

[62] Given my conclusion that section 14(3)(a) applies to all of the records and section 14(3)(b) applies to some of them, disclosure of the personal information of the appellant's sister would be presumed to constitute an unjustified invasion of personal privacy. However, based on my analysis, below, I find that disclosure would not constitute an unjustified invasion of personal privacy, because section 14(4)(c) applies.

Section 14(4)(c) - compassionate reasons

[63] As stated above, the section 14(3)(a) and 14(3)(b) presumptions can be overcome only if the personal information falls under section 14(4) of the *Act* or if there is a compelling public interest in the disclosure of the records that clearly outweighs the purpose of the section 14 exemption.¹⁵ In these appeals, the public interest override in section 16 has not been raised and, in my view, it does not apply.

[64] Of relevance to these appeals is the exception in section 14(4)(c). This section states:

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

discloses personal information about a deceased individual to 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.

[65] In Orders MO-2237 and MO-2245, then-Assistant Commissioner Brian Beamish established that the application of section 14(4)(c) requires a consideration of the following questions, all of which must be answered in the affirmative 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?

¹⁵ *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767.

3. Is the disclosure of the personal information of the deceased individual desirable for compassionate reasons, in the circumstances of the request?

[66] The police submit that the first two criteria are met, but in the circumstances of these appeals, there are no compassionate grounds to justify disclosing the remaining information at issue to the appellant.

Part one– personal information of the deceased

[67] I have concluded that the records contain the personal information of the appellant's deceased sister. Accordingly, I am satisfied that the first requirement for the application of section 14(4)(c) is satisfied.

Part two – close relative

[68] 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."¹⁶

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

"close relative" means a parent, child, grandparent, grandchild, brother, sister, uncle, aunt, nephew or niece, whether related by blood or adoption;

[70] As the appellant is the sister of the deceased individual whose personal information is contained in the records at issue, I am satisfied that she is a "close relative" as defined by the *Act*. Accordingly, I find that the second requirement for the application of section 14(4)(c) is also fulfilled.

Part 3 – desirable for compassionate reasons

[71] The police submit that in recognition of the compassionate reasons for surviving family members to have greater knowledge of the circumstances of a loved one's death, all of the information pertaining to the circumstances of the appellant's sister's death has been disclosed. The police submit that the information remaining at issue in these appeals relates only to the sister's prior interactions with the police.

[72] The police submit that in deciding that section 14(4)(c) is not applicable to the records at issue, it considered the factors in section 14(2). First, the police submit that the fact that the sister is deceased is a consideration, but does not eliminate or diminish the privacy interest in information that, if disclosed, may have constituted an unjustified invasion of personal privacy while she was alive.

¹⁶ Order MO-2245.

[73] Second, the police submit that information about an individual's involvement with the criminal justice system, or even the fact of such involvement, is typically considered highly sensitive because disclosure would cause personal distress. Similarly, the police submit that information pertaining to investigations and apprehensions under the *Mental Health Act* are also highly sensitive, even if not considered investigations into violations of law.

[74] The appellant submits that her situation meets the requirements of section 14(4)(c). In support of this position, she states that her "sister was apprehended by a police officer on [a specified date and at a specific time]. She passed away [...] less than 5 hours after she was returned to her apartment."

[75] The appellant submits that she has already received a significant amount of information about her sister's death, such as photographs, 911 calls, and police notes, but requires further information about the circumstances surrounding and leading up to her sister's death for closure. The appellant refers me to Orders MO-2430 and PO-3133 and, in particular, to the adjudicators' interpretation of "events leading up to and surrounding" an individual's death.

[76] The appellant maintains that she is aware of her sister's personal and medical history. She further submits that the police records that she has already received contain more sensitive information than the records she is requesting through these appeals. She also submits that the previously disclosed police records regarding her sister's death reveal the fact that her sister had a medical history.

[77] The appellant submits that as the deceased's only sister, she would "most certainly act in [her sister's] best interest to protect her personal information." As mentioned previously, the appellant states that she is not interested in obtaining access to the personal information of other individuals.

Analysis and findings

[78] The police's main concern is that the withheld portions of the records contain highly sensitive information about the appellant's sister that does not relate directly to the sister's death.

[79] The police's decision appears to rest on the temporal sequence of when the records were created. The police disclosed portions of the records created on the date that the police conducted the sudden death investigation. Any records created prior to that date were not disclosed, as the police claimed they are not relevant to the appellant's sister's death.

[80] In Orders MO-2237 and MO-2245, then-Assistant Commissioner Brian Beamish made the following findings:

... 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.

[81] In Order MO-2515, Adjudicator Laurel Cropley ordered the disclosure of records relating to police involvement with a deceased individual in the weeks prior to the individual’s death. She stated:

In assessing the relevant circumstances of the current appeal, I give significant weight to the fact that the records at issue contain information about the deceased’s health and physical state within a short period of time prior to his death. This information sheds some light on the deceased’s circumstances shortly before his death [...] I also attribute significant weight to the appellant’s need for this information as part of her grieving process.

[82] I adopt a similar approach in these appeals.

[83] With respect to the appellant’s sister’s privacy interest, much of the withheld personal information relates to her prior interactions with the police and their observations regarding her mental and physical health. I accept the police’s submissions that the withheld information is highly sensitive personal information that would normally be protected under section 14(1), based on the application of the factor in section 14(2)(f).

[84] However, I give considerable weight to the fact that despite having been granted access to some information about her sister’s death, the appellant seeks additional information as part of her grieving process. I note that the information that has already been disclosed reveals, for the most part, the steps the police took in conducting the sudden death investigation as well as their findings. The nature of that information differs significantly from the information that remains withheld, which primarily relates to the sister’s mental health and prior interactions with police. I accept that the information the appellant has received regarding the sudden death investigation has not provided her with clarity regarding the circumstances surrounding and leading up to her sister’s death, and I find that more information is desirable to provide closure for the appellant.

[85] I am also satisfied that the significant amount of information about the appellant’s sister’s physical and mental state in the days leading up to her death sheds light on the sister’s circumstances shortly before her death. I find that this information would assist the appellant in understanding and coming to terms with her sister’s death, and I accord significant weight to this finding.

[86] Having considered the records and the parties' representations, and having weighed the sister's privacy interests with the appellant's need to understand and come to terms with her sister's death, I find that, in the circumstances of these appeals, disclosure of the deceased sister's personal information in the records is desirable for compassionate reasons. I am therefore satisfied that the requirements for application of section 14(4)(c) have been met, thereby overcoming the presumptions under section 14(3). As a result, I find that disclosure of the information at issue would not be an unjustified invasion of personal privacy. Therefore, the exception to section 14(1) at section 14(1)(f) applies, and section 14(1) does not apply to this information.

Summary of findings

[87] All of the records at issue in Appeals MA18-53 and MA18-376 contain personal information of the appellant's sister and other individuals. The appellant has indicated that she does not seek access to information that would identify other individuals. Accordingly, with the exception of the personal information of the affected party who provided consent, the personal information of other individuals is outside the scope of the appeal.

[88] Similarly, the appellant has indicated that she does not seek access to police code information in the records, and this too is outside the scope of the appeal.

[89] One affected party has consented to the disclosure of their personal information in records relating to one of the occurrences at issue in Appeal MA18-376. Accordingly, the personal privacy exemption at section 14(1) does not apply to that information.

[90] Disclosure of the appellant's sister's personal information in the records is presumed to be an unjustified invasion of the sister's personal privacy under section 14(1). This is because the presumption in section 14(3)(a) applies to the sister's personal information in all of the records and the presumption in section 14(3)(b) applies to the sister's personal information in the records at issue in Appeal MA18-52. However, these presumptions are overcome by the exception in section 14(4)(c), which allows for the disclosure of personal information about a deceased individual to a close relative of the deceased individual where disclosure is desirable for compassionate reasons. Accordingly, the personal privacy exemption at section 14(1) does not apply to the appellant's sister's personal information in the records at issue.

ORDER:

1. I order the police to disclose to the appellant the portions of the records relating to her sister that the police withheld under section 14(1), as set out in the copy of records that accompanies this order. For the sake of clarity, I have highlighted the portions of the written records that should not be disclosed. The information that is not highlighted and the last 1 minute and 52 seconds of audio recording track 3 (from 1:30 onwards) should be disclosed by **January 31, 2019** but not before **January 25, 2019**.

2. I uphold the police's decision to withhold access to the remaining information in the records on the basis that it falls outside the scope of the appeal.
3. In order to verify compliance with this order, I reserve the right to require the police to provide me with a copy of the records disclosed pursuant to order provision 1.

Original Signed by: _____

Jaime Cardy
Adjudicator

December 21, 2018 _____