

Information and Privacy Commissioner,
Ontario, Canada



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

RECONSIDERATION ORDER MO-3957-R

Appeal MA19-00500

Halton Regional Police Services Board

Friday September 25, 2020

Summary: The police requested a reconsideration of Order MO-3796 on the basis that there was a fundamental or jurisdictional defect in the adjudication process or a clerical error, accidental error or omission under section 18.01(a), 18.01(b) and/or 18.01(c) of the IPC's *Code of Procedure* (the *Code*). The adjudicator partially allows the reconsideration request.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, C. M.56, as amended, section 14(4)(c). IPC's *Code of Procedure*, section 18.01.

Orders and Investigation Reports Considered: Orders MO-2237, MO-3796, PO-2538-R and PO-3062-R.

OVERVIEW:

[1] The requester submitted a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) to the Halton Regional Police Services Board (the police) for records relating to his son's death.

[2] After locating responsive records, the police issued an access decision granting the appellant partial access to them. The police advised the appellant that they were releasing some information on the basis of the compassionate grounds provision in section 14(4)(c). In denying access to portions of the records, the police relied on section 38(a) (refuse to disclose requester's personal information), in conjunction with the law enforcement exemptions in sections 8(1)(e), 8(1)(l) and 8(2)(a). The police also claimed

that disclosure of the records would result in an unjustified invasion of personal privacy under section 38(b), with reference to the presumption in section 14(3)(b). Finally, the police claimed that portions of the records contain information that is not responsive to the request.

[3] The requester, now the appellant, appealed the police's decision to this office.

[4] I conducted an inquiry into the issues in the appeal. After completing the inquiry, I issued Order MO-3796, upholding the police's decision with regard to most of the information at issue. However, on the basis of the compassionate grounds exception under section 14(4)(c), I ordered the police to disclose:

- further personal information of the appellant's son where I found that affected parties' personal information could be successfully severed
- a recording of one 911 call with all personal information of the caller severed including voice distortion and redaction of an address
- 3 pages of one record (pages 318 to 320 of Record 56¹) where the personal information of the appellant's son was mixed with the personal information of two affected parties.

[5] I noted in the order that in relation to the last item, some personal information of affected parties would be disclosed for compassionate reasons under section 14(4)(c).

[6] Following the issuance of Order MO-3796, I received a reconsideration request from the police arguing that there was a fundamental defect in the adjudication process, that there was some other jurisdictional defect and that there was a clerical error, accidental error or omission or other similar error, all of which are grounds for reconsideration described in section 18.01 of the IPC's *Code of Procedure* (the *Code*).

[7] I invited the appellant to respond to the police's reconsideration request and he provided submissions.

[8] In this decision, I reconsider my finding in Order MO-3796, in part. I allow the reconsideration on the basis of section 18.01(c) (accidental or clerical error) and find some of the information at issue in Records 4 (page 6), Record 6 (pages 5 and 6), Record 10 (page 1), Record 15 (page 1), Record 18 (pages 1 and 7), Record 20 (page 2) and Record 27 (page 4) to be exempt under section 14(1) or 38(b) (personal privacy) of the *Act*, despite ordering that information disclosed in Order MO-3796.

RECORDS:

[9] The police take issue with some of the information that I ordered them to disclose

¹ Identified as Record 18 pages 4, 5 and 6 by the police.

to the appellant. The information appeared in the police officers' notes and an audio recording of a 911 call. The police provided the following chart setting out the records, pages and lines that are captured by their reconsideration request:

Record²	Page	Section/Line
4	2	5
4	6	1-3
6	5	2, 3, 4
10	1	5
12	1	3-6
12	2	1, 2, 4, 7
15	1	3, 4, 5, 7, 9, 11
18	1	1, 5, 7
18	5	2, 3, 5-10, 12, 13, 15-25, 27, 28, 30-35
18	6	1-4, 8, 9, 11-13, 19-22, 24-31
18	7	1-8
18	9	5, 7-9
20	1	2
20	2	4-6, 8, 9, 11
22	2	3
27	1	2
27	4	3
911 audio		

² These record numbers are as referenced by the police in their reconsideration request.

DISCUSSION:

Reconsideration Process

[10] This office's reconsideration grounds and process are set out in section 18 of the IPC's *Code of Procedure* which reads:

18.01 The IPC may reconsider an order or other decision where it is established that there is:

- (a) a fundamental defect in the adjudication process;
- (b) some other jurisdictional defect in the decision; or
- (c) a clerical error, accidental error or omission or other similar error in the decision.

18.02 The IPC will not reconsider a decision simply on the basis that new evidence is provided, whether or not that evidence was available at the time of the decision.

18.08 The individual who made the decision in question will respond to the request, unless he or she for any reason is unable to do so, in which case the IPC will assign another individual to respond to the request.

[11] The reconsideration process set out in this office's *Code of Procedure* is not intended to provide parties with a forum to re-argue their cases. In Order PO-2538-R, the adjudicator reviewed the case law regarding an administrative tribunal's power of reconsideration, including the Supreme Court of Canada's decision in *Chandler v. Alberta Assn. of Architects*.³ With respect to the reconsideration request before him, he concluded:

[T]he parties requesting reconsideration ... argue that my interpretation of the facts, and the resulting legal conclusions, are incorrect... In my view, these arguments do not fit within any of the criteria enunciated in section 18.01 of the *Code of Procedure*, which are based on the common law set out in *Chandler* and other leading cases such as *Grier v. Metro Toronto Trucks Ltd*.⁴

On the contrary, I conclude that these grounds for reconsideration amount to no more than a disagreement with my decision, and an attempt to re-litigate these issues to obtain a decision more agreeable to the LCBO and the affected party ... As Justice Sopinka comments in *Chandler*, "there is a

³ (1989), 1989 CanLII 41 (SCC), 62 D.L.R. (4th) 577 (S.C.C.).

⁴ 1996 CanLII 11795 (ON SC), 28 O.R. (3d) 67 (Div. Ct.).

sound policy basis for recognizing the finality of proceedings before administrative tribunals." I have concluded that this rationale applies here.

[12] This approach has been adopted and applied in subsequent orders of this office.⁵ In Order PO-3062-R, for example, the adjudicator was asked to reconsider her finding that the discretionary exemption in section 18 of the *Freedom of Information and Protection of Privacy Act* did not apply to the information in the records at issue in that appeal. The adjudicator determined that the institution's request for reconsideration did not fit within any of the grounds for reconsideration set out in section 18.01 of the *Code*, stating as follows:

It ought to be stated up front that the reconsideration process established by this office is not intended to provide a forum for re-arguing or substantiating arguments made (or not) during the inquiry into the appeal...

[13] In Order MO-3796, I reviewed the withheld information and found that all of the records contained the appellant's son's personal information and only some of them contained the appellant's personal information. The records that contained only the appellant's son's personal information, along with other affected parties, fall under Part I of the *Act* (section 14(1)) and the records that contained the appellant's personal information fall under Part II of the *Act* (section 38(b)).

[14] Under section 38(b), where a record contains personal information of both the requester and another individual, and disclosure of the information would be an "unjustified invasion" of the other individual's personal privacy, the institution may refuse to disclose that information to the requester. Since the section 38(b) exemption is discretionary, the institution may also decide to disclose the information to the requester.⁷ Section 38(b) reads:

A head may refuse to disclose to the individual to whom the information relates personal information,

if the disclosure would constitute an unjustified invasion of another individual's personal privacy

[15] In contrast, under section 14(1), where a record contains personal information of another individual but not the requester, the institution is prohibited from disclosing that information unless one of the exceptions in sections 14(1)(a) to (e) applies, or unless disclosure would not be an unjustified invasion of personal privacy. In this instance, none of section 14(1)(a) to (e) apply. Section 14(1)(f) reads:

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

⁵ See, for example, Orders PO-3062-R, PO-3558-R and MO-3872-R.

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

[16] In both section 38(b) and section 14 situations, sections 14(2), (3) and (4) of the *Act* provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the individual's personal privacy.

[17] Section 14(2) provides some criteria for the police to consider in making this determination; section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy; and section 14(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

[18] In Order MO-3796, I found that the following presumption at 14(3)(b) applied:

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

was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

[19] I also found that the factors at section 14(2) applied in this appeal and gave the factor at section 14(2)(d) (fair determination of rights) little weight to support disclosure of the affected parties' personal information and section 14(2)(f) (highly sensitive) significant weight to support non-disclosure of the same information. These sections state:

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

(d) the personal information is relevant to a fair determination of rights affecting the person who made the request;

(f) the personal information is highly sensitive;

[20] Finally, I also examined section 14(4)(c) (compassionate grounds) and found that some of the withheld information should be disclosed to the appellant. Section 14(4)(d) reads:

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

(c) discloses personal information about a deceased individual to 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.

Representations

[21] The police submit that I should reconsider Order MO-3796 on the basis of sections 18.01(a), (b) and (c).

[22] Particularly, the police argue that, in my analysis of the mandatory and discretionary personal privacy exemptions, I gave too much weight to section 14(4)(c) (compassionate grounds) despite my findings supporting non-disclosure of affected parties' personal information under the factors and presumptions in sections 14(2) and (3). The police submit that if my order stands it will result in the potential disclosure of personal information of affected individuals and likely breach their personal privacy.

[23] The police submit that even though I gave significant weight to each of the factors that support non-disclosure of affected parties' personal information under section 14(2), including the unlisted factor "endanger the life or physical safety" and also found that the presumption in section 14(3)(b) (investigation into possible violation of law) applied, I still ordered disclosed the personal information of affected parties after considering section 14(4)(c).

[24] The police submit that while the affected parties' statements discuss the appellant's son (thus intertwining his personal information with that of themselves) the information is, first and foremost, the personal information of the affected party, not the appellant's son. They refer to Order PO-1880 where it was determined that to qualify as personal information it must be reasonable to expect that an individual may be identified if the information is disclosed.

[25] The police submit that they appreciate that compassionate grounds under section 14(4)(c) could result in the deceased's personal information being disclosed to the appellant; however, they submit that in Order MO-3796, I permitted the compassionate reasons advanced by the appellant to allow disclosure of the affected parties' personal information which they argue is not contemplated by the *Act* and therefore outside my jurisdiction.

[26] The police refer to the three established⁶ questions when determining if compassionate grounds under section 14(4)(c) apply so as to permit disclosure, despite section 14(1):

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

[27] The police submit that the third question focuses on whether the compassionate

⁶ Order MO-2237.

reasons should outweigh the protection of the personal privacy for the deceased only. The police submit that the question is not asking whether disclosure of personal information of affected parties is desirable for compassionate reasons.

[28] In Order MO-3796, I found that some of the withheld information in the records could be further severed and disclosed to the appellant, as it would only contain the deceased's personal information without identifying an affected party. With regard to some of this information, the police submit:

- the information is provided by an affected party and although mixed with the appellant's or his son's personal information, is still the personal information of the affected party
- the information communicates that the affected party was interviewed
- the information would reveal the gender of the affected party
- the information would reveal the relationship status of an affected party
- the information contains the affected party's personal opinion of the deceased
- the information is not responsive to the access request
- due to the intimate nature of the discussion being described and the appellant's knowledge of the evidence, the affected party will be identified
- the information would reveal an address of an affected party
- due to the appellant's knowledge of the evidence, the affected party would be identified.

[29] The police also submit that I should re-examine the "desirable" reasons that the appellant advance to support the disclosure of this information for compassionate reasons.

Analysis and findings

[30] In Order MO-3796, I addressed the police's decision to withhold portions of the records under the personal privacy mandatory exemption at section 14(1) and the discretionary personal privacy exemption at 38(b). As noted, I ordered some personal information of the appellant's son to be disclosed finding that it did not contain the personal information of affected parties. I also ordered disclosed information that was mixed personal information of the appellant's son with an affected party. For the purpose of this reconsideration order, I will continue to discuss the records in this way.

Information about the appellant's son that I found was not mixed with personal information of an affected party

[31] In Order MO-3796 at paragraph 71, as noted, I found that some of the personal

information of the appellant's son could be further severed from the records and provided to the appellant. I found that parts of the withheld information were the personal information of the appellant's son without any of the affected parties' information intertwined or that the affected party's personal information could be successfully severed so that the disclosed information was only the personal information of the appellant's son.

[32] However after reviewing the police's reconsideration request along with the specific information I ordered disclosed, I find that I made accidental errors that should be re-considered under section 18.01(c) of the *Code*. These errors include information that:

- identifies an affected party's address (Record 4, page 6 lines 2-3; Record 10, page 1, line 5; Record 15, page 1 line 4, 5, 7, 11; Record 18, page 1, line 1, 6 and page 7 line 1; Record 20, page 2 lines 4-6 and 8-11)
- identifies the gender of an affected party (Record 27, Page 4, line 3; Record 18, page 1, line 6,)
- identifies the relationship status of an affected party (Record 6, page 6, lines 1-3)
- has no personal information of the appellant's son (Record 6, page 5, lines 2-4; Record 18, page 1 line 5).

[33] As a result, I will re-highlight these portions of the records in order to correct these accidental errors.

[34] However, I do not accept the police's submission that information in some of these excerpts provided by an affected party does not contain the personal information of the appellant's son. The police submit that some of the information I ordered disclosed (Record 15, Page 1, line 3 and 4 and Record 18, page 1 lines 1, 5-7) does not contain information about the appellant's son, however, in my further review, this information does contain information regarding the investigation of the incident and I confirm my finding that this is personal information about the appellant's son that should be disclosed on compassionate grounds. In addition, the police submit that certain excerpts contain an affected party's personal opinion of the appellant's son and is therefore that affected party's personal information (some of the information at Record 4, page 6, lines 1-3; Record 15, page 1 lines 3,4; Record 27, page 1, line 2). I disagree. In my review of this information I continue to be of the view that these excerpts do not identify an affected party, and so they are not the affected party's personal information.

[35] In any event, paragraph (e) of the definition of "personal information" in section 2(1) of the *Act* defines personal information as recorded information about an individual, including,

(e) the personal opinions or views of the individual except if they relate to another individual,

[36] Therefore, personal opinions or views of an affected party and relate to the appellant's son are the personal information of the appellant's son, not the affected party.

In this instance, since the information does not identify an affected party and in any event would be the personal information only of the appellant's son, I will not reconsider this finding in order MO-3796.

[37] Also, in their reconsideration request, the police submit that information at Record 6 page 5 lines 3 and 4 contains time stamps in relation to information unrelated to the occurrence. However, after my review of this information in the records, I note that the police did not identify this information as not responsive and I am therefore unable to reconsider this finding.

Information about the appellant's son that I found was mixed with personal information of an affected party

[38] As noted, the police ask that I reconsider my findings in Order MO-3796 that mixed personal information of the appellant's son and affected parties should be disclosed to the appellant. The police submit that in MO-3796, I stated that the affected party's privacy interest must yield to the compassionate reasons for disclosure articulated by the appellant and submit that if the order is not reconsidered disclosure would cause affected parties personal distress and endanger the life or physical safety of involved parties.

[39] In their reconsideration request the police refer to Record 18 (pages 4, 5 and 6) along with a 911 audio recording.⁷ These are all of the records that I ordered disclosed that appeared to have mixed personal information of an affected party and that of the appellant's son. However, I do not agree with the police that my finding with regard to these records should be reconsidered.

[40] In Order MO-3796, I found that the presumption at section 14(3)(b) (investigation into possible violation of law) applied to all of the records. I also found that the factor at section 14(2)(f) (highly sensitive) applied to support non-disclosure of the information, as by their very nature the records could be considered highly sensitive since they contain information detailing the particulars of the appellant's son's death. I also accepted that there was a reasonable expectation of significant personal distress if the affected parties' personal information was disclosed by way of unwanted contact by the appellant. I therefore found that section 14(2)(f) weighed heavily in favour of a finding that disclosure of the withheld portions of the records would constitute an unjustified invasion of personal privacy. I also examined as an unlisted factor under section 14(2) whether disclosure of the information would endanger the life or physical safety of affected parties, a factor weighing against disclosure. I accepted that the police were contacted by affected parties regarding complaints of the appellant and, as a result, I gave this unlisted factor significant weight.

[41] After a discussion of the presumption and various factors for and against disclosure of the withheld information under section 14(1) (records that did not include the appellant's personal information) and under section 38(b) (records that contain the

⁷ As noted Record 18, pages 4 to 6 referenced by the police in their reconsideration request was referred to as Record 56, pages 318 to 320 in Order MO-3796.

appellant's personal information), I found that disclosure of the withheld portions of the records would constitute an unjustified invasion of personal privacy, subject to my review of the exception in section 14(4)(c) (compassionate grounds).

[42] As noted, the police submit that in examining whether disclosure of the personal information of the deceased individual was desirable for compassionate reasons, I erred because I ordered disclosed the affected parties' personal information, which, they submit, is not the intention of the legislation.

[43] In Order MO-2237, Commissioner Brian Beamish addressed the scope of section 14(4)(c) and commented on the legislative history of this subsection. In that appeal, similar to this appeal, it was found that parts of the records that consisted of the personal information of the appellant's daughter (the deceased individual) also contained the personal information of affected parties. The former Commissioner found that the information of the deceased in Order MO-2237 was inextricably intertwined with the personal information of affected parties in a way that could not be fully resolved by severing and accordingly, "these records raise one of the more difficult aspects of applying section 14(4)(c), namely the question of how to treat information that is clearly the personal information of the deceased individual, but, at the same time, is also the personal information of another individual or individuals."

[44] In their reconsideration request, the police refer to the three questions that must be answered in the affirmative in order for section 14(4)(c) to apply and submit that question three focuses on whether the compassionate reasons for disclosure advanced by the appellant should outweigh the personal privacy of the deceased. The police submit that the question involves the disclosure of the personal privacy of the deceased and "is not asking whether the disclosure of the personal information of affected third parties is desirable for compassionate reasons." However, this issue was specifically addressed by the Commissioner in Order MO-2237, which established the three questions referenced by the police, when he 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 or coroner's investigation, are likely to involve discussions with other individuals that will entail, to a greater or lesser extent, the collection and recording of those individuals' personal information. In my view, an interpretation of this section that excludes any information of a deceased individual on the basis that it also qualifies as the personal information of another individual would be inconsistent with the definition of "personal information", set out above, since the information would clearly qualify as recorded information "about" the deceased individual. It would also frustrate the obvious legislative intent behind section 14(4)(c), of assisting relatives in coming to terms with the death of a loved one.

[45] The Commissioner examined the legislative history in the passing of section 14(4)(c) and concluded that it was "consistent with both the definition of '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."

[46] It is important to note that in Order MO-3796, I accepted that the appellant required information about the events surrounding his son's death for closure and I gave this significant weight; however, I also found that "section 14(4)(c) does not apply in the circumstances of this appeal to **most** of the withheld information" (emphasis added). At paragraph 73, I found that the police had disclosed a great deal of information and except for part of a record (Record 18 in the police's reconsideration representations, referred to as Record 56 in Order MO-3796),

In my view, except for part of a record (Record 56, to be discussed below) the information already provided to the appellant as supplemented by the information that I have ordered disclosed, provides him with an understanding of the events leading up to and surrounding the death of his son and of the investigation that ensued. In light of these circumstances, and the highly sensitive nature of the personal information of the affected parties that remains at issue, I find that it has not been established that the disclosure of the specific information remaining at issue is desirable for compassionate reasons as contemplated by the third part of the section 14(4)(c) test.

[47] In Order MO-3796, I noted that Record 56 (pages 318, 319 and 320)⁸ included a summary of two affected parties' statements taken by a police officer. I found that some of the information on these pages related to an affected party and was not about the appellant's son and disclosure would be an unjustified invasion of that person's personal privacy. However, I found that for other portions of information on these pages, which included the personal information of the appellant's son alone or mixed with the personal information of affected parties, should be disclosed to the appellant under compassionate grounds. I noted specifically that "[w]ith respect to this information only, any order that I make that requires the disclosure of the appellant's son's personal information will result in the disclosure of the personal information of the affected parties." I noted that the relevant circumstances to be considered are "the nature of the request, and the privacy interests of the affected parties."

[48] I do not agree with the police that I need to re-examine the "desirable" reasons advanced by the appellant to support his request for the records under compassionate grounds. In my view, this amounts to the police attempting to re-argue their position which I already considered in the order that is the subject of the reconsideration request.

[49] In any event, I continue to accept the evidence of the appellant regarding his need

⁸ As noted referenced by the police as Record 18 pages 4, 5 and 6 in their reconsideration request.

to know all of the circumstances surrounding his son's death but it is important to note that at the end of my analysis, the police were only ordered to produce limited information with mixed personal information. At paragraph 78, I stated:

In assessing the relevant circumstances, including the appellant's need to receive this information to gain a better understanding of the circumstances of his son's death, I give significant weight to the fact that much of his son's personal information in this record includes the affected parties' observations about the deceased's health and circumstances prior to his death. In my view, this is the appellant's son's sensitive personal information. However, in circumstances where the deceased is determined to have died of undetermined causes and grieving relatives seek access to information about the circumstances of the death, I also attribute significant weight to the appellant's need for this information as part of his grieving process. I have also considered the appellant's perception that the information that has been disclosed to him to date has not provided him with clarity regarding the circumstances of death as a relevant circumstance favouring disclosure. I give significant weight to the fact that the appellant is seeking information for the purposes of arriving at an accurate picture of the cause of death of his son.

[50] At paragraph 81, I concluded, after considering all the circumstances surrounding the request, that with regard to these three pages, which contained information about the appellant's son, the affected parties' personal privacy interests "must yield to the compassionate reasons for disclosure." I noted that wherever possible, I would sever the affected parties' personal information, which would limit the disclosure of their sensitive personal information. I noted that by disclosing the highlighted information on these three pages, combined with what the police already disclosed, the appellant would possess a summary of the various statements made in the video and audio records that I found should not be disclosed for privacy reasons.

[51] Further, in my review of the information that the police already disclosed, it is evident that the police have already disclosed just a short summary of this information (Record 18 pages 4-6). In my view, by disclosing more of this information, the appellant will receive a more complete picture of the day of his son's death. Despite my finding under sections 14(2) and 14(3), I continue to be of the view that this information should be disclosed for compassionate reasons to assist the appellant with the grieving process.

[52] With regard to the one 911 audio call recording that I ordered the police to disclose, the police submit that by releasing this information they will reveal the address of an affected party. They also submit that an affected party provided the information and although it is intertwined with the personal information of the appellant's son, it is still the personal information of an affected party. However, in my order, I found that this record should be disclosed only after the voice of the affected party was distorted and the address redacted from the record. In my view, the police's reconsideration request regarding this information amounts to an attempt to reargue their submissions I considered in the order. In their reconsideration request, the police did not address any

inability to sever this information from the record as ordered and I therefore am not prepared to reconsider this part of my order.

[53] In Order MO-3796, as noted, one of the factors that I considered under section 14(2) was the unlisted factor “endanger the life or physical safety” which was given significant weight and resulted in non-disclosure of significant amounts of information, including witness statements, audio and video recordings. As I noted, in that order, it was my view that the police’s submissions concerning the exemption at section 8(1)(e) be considered under section 14(2) in this way.⁹ I did not then go on to examine if section 8(1)(e) (endanger the life or physical safety) exemption also applied to the remainder of the personal information that I ordered disclosed on compassionate grounds.

[54] In their representations provided during the inquiry, the police submitted that affected parties had contacted them regarding complaints of harassment by the appellant suggesting that this was sufficient evidence to conclude that if this information were disclosed the life or physical safety of involved parties could reasonably be expected to be endangered and section 8(1)(e) therefore applied. Although not specifically addressed in Order MO-3796, I do not agree with the police that this is sufficient to invoke the exemption at section 8(1)(e). Although the police submit that the appellant “has demonstrated behaviour defined as criminally harassing” toward affected parties, no evidence of charges was provided. Despite this, I gave significant weight to this information as a factor weighing against disclosure of the personal information in my consideration of the section 14(2) factors.

[55] Finally, the police also submit that there was a lack of continuity between what is and what is not being ordered disclosed. They refer to one excerpt in Record 20 and submit that it contains the appellant’s personal information and I did not order it disclosed. In my review of this record, it consists of handwritten notes from an officer’s notebook that are just legible. In my further review of this page, I still do not recognize any personal information of the appellant. I agree with the police that any personal information of the appellant should be released, however, as stated, I do not recognize any personal information of the appellant on that page.

ORDER:

1. I reconsider Order MO-3796, in part, on the basis of section 18.01(c) of the *Code*, regarding Records 4, 6, 10, 15, 18, 20 and 27.
2. I order the police to provide the appellant with a copy of the pages as set out in the highlighted copies of those pages provided with the police’s copy of this order, and I order them to do so by **October 30, 2020** but not before **October 23, 2020**. To be clear, the highlighted portions of the records should be disclosed.

⁹ In their representations provided during the inquiry, the police point out that ten codes, patrol zone information and/or statistical information was withheld under section 8(1)(e).

3. I confirm order provision 3 in Order MO-3796 with regard to the 911 audio (file no. 16-216413).
4. I otherwise confirm the order provisions in Order MO-3796.
5. In order to verify compliance with order provisions 1, 2 and 3, I reserve the right to require the police to provide me with a copy of the records disclosed to the appellant.
6. The timelines noted in order provision 2 may be extended if the police are unable to comply in light of the current COVID-19 situation, and I remain seized to consider any resulting extension request.

Original signed by: _____

Alec Fadel
Adjudicator

September 25, 2020 _____