

Information and Privacy Commissioner,  
Ontario, Canada



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

---

## ORDER MO-4012

Appeal MA18-356

Toronto Police Services Board

February 18, 2021

**Summary:** The Toronto Police Services Board (the police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for the general occurrence report and two officers' memorandum notes relating to the death of the appellant's parents. The police issued a decision granting partial access to the responsive records with severances under section 38(b) (personal privacy) of the *Act*. In this order, the adjudicator upholds the police's decision in part, and orders the police to disclose additional information relating to the death of the appellant's parents on compassionate grounds under section 14(4)(c).

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2(1) (definition of "personal information"), 14(1), 14(1)(f), 14(2)(f), 14(2)(h), 14(2)(i), 14(3)(b), 14(4)(c) and 38(b).

**Orders Considered:** Orders MO-2245, PO-2410, MO-3796, MO-3862 and PO-4087.

### BACKGROUND:

[1] The appellant's parents died in their home in 2017. Subsequently, she submitted an access request to the Toronto Police Services Board (the police), pursuant to the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), for the following records:

I am requesting the report of my father [named individual] and my mother [named individual] who were discovered [a date in 2017] at their home [named address]. I requested a copy from the executors but have

not been provided one. Also requesting Memo books of the [two named detectives]. I am the daughter of the deceased.

[2] The police found responsive records, including a police occurrence report and memorandum notes of one officer, and issued a decision granting partial access to the responsive records, with severances pursuant to the discretionary personal privacy exemption in section 38(b). The police also withheld parts of the records that they identified as being not responsive to the request. The police advised the appellant that in making its decision on access, the compassionate grounds provision of the *Act* in section 14(4)(c) had been considered.

[3] The police subsequently issued a supplemental decision on an additional record (memorandum notes of another officer), granting partial access to this record, withholding information pursuant to the discretionary personal privacy exemption in section 38(b). The police also withheld some information that they identified as being not responsive to the request.

[4] Unsatisfied with the police's decision, the appellant appealed their decision to this office.

[5] During mediation, the appellant consented to her identity being shared with the affected parties. The mediator notified and sought consent to release the personal information of all the affected parties. Consent to release information was obtained from one affected party and was provided to the police. The police subsequently issued a supplemental decision granting additional disclosure of information contained in the responsive records.

[6] The appellant advised the mediator that she was not pursuing access to those portions of the records identified as non-responsive, but wished to pursue access to the remaining information severed from the records.

[7] As further mediation was not possible, the appeal was transferred to the adjudication stage of the appeal process, where an adjudicator may conduct an inquiry under the *Act*.

[8] The adjudicator initially assigned to this appeal invited the police and several affected parties to provide representations on the issues in this appeal. The police submitted representations, as did four affected parties.

[9] In accordance with section 7 of this office's *Code of Procedure and Practice Direction Number 7*, a copy of the police's representations (in their entirety) and non-confidential copies of the representations of two affected parties were shared with the

appellant.<sup>1</sup> The representations of the other two affected parties were withheld in full because they met the criteria for withholding representations.<sup>2</sup> One of the affected parties objected to the disclosure of her personal information.<sup>3</sup>

[10] The appeal was then transferred to me to continue the adjudication of the issues on appeal. I then shared a copy of a summary of the appellant's position with the police and the four affected parties.<sup>4</sup> The police and three of the four affected parties<sup>5</sup> provided reply representations in response to the appellant's position. All of the affected parties objected to the disclosure of their personal information.

[11] In this order, I uphold the police's decision in part, and order the police to disclose additional information relating to the death of the appellant's parents on compassionate grounds.

## **RECORDS:**

[12] The records at issue are a general occurrence report and memorandum notes of two officers (Detective 1 and Detective 2), totalling one hundred and eleven pages. Thirty-six pages of the records are either not severed<sup>6</sup> or only have information identified as non-responsive severed, leaving seventy-five pages of records at issue.

[13] At issue are Detective 1's memorandum notes for the following dates:

- October 2, 2017
- October 3, 2017
- October 4, 2017
- December 9, 2017
- February 21, 2018

---

<sup>1</sup> Portions of the affected parties' representations were withheld as they meet the confidentiality criteria for withholding representations found in the IPC's *Practice Direction Number 7*.

Both these affected parties retained the same counsel.

<sup>2</sup> One of these affected parties later retained counsel. Initially, this counsel thought he represented two affected parties but later he clarified and confirmed that he only represented one affected party.

<sup>3</sup> The other affected party did not state that he objected to the disclosure of his personal information but later on, in his reply representations, he did object to it being disclosed.

<sup>4</sup> As noted above, three of the affected parties were represented by two counsel, who provided representations during the inquiry. I will not be attributing the arguments to specific counsel.

<sup>5</sup> One of the four affected parties did not provide reply representations but she confirmed verbally that her position has not changed from her initial representations.

<sup>6</sup> This includes Detective 1's memorandum notes for February 17, 2018.

- February 22, 2018
- March 6, 2018

[14] At issue are Detective 2's memorandum notes for the following dates:

- October 1, 2017
- February 16, 2018

### **ISSUES:**

- A. Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?
- B. Does the mandatory exemption at section 14(1) or the discretionary exemption at section 38(b) apply to the information at issue?
- C. Did the police exercise their discretion under section 38(b)? If so, should this office uphold the exercise of discretion?

### **DISCUSSION:**

#### **A: Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?**

[15] In order to determine which sections of the *Act* may apply, it is necessary to decide whether the records contain "personal information" and, if so, to whom it relates.

[16] "Personal information" 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;

[17] 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>7</sup>

[18] 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.

[19] 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

---

<sup>7</sup> Order 11.

professional, official or business capacity will not be considered to be "about" the individual.<sup>8</sup>

[20] 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>9</sup>

[21] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.<sup>10</sup>

[22] The police submit that the records contain "personal information" as defined in section 2(1) of the *Act*. They state that the information consists of the names, home addresses, and date of births of identifiable individuals. Some of the information are also comments made by identifiable individuals to the police about other identifiable individuals.

[23] The police submit, however, that some of the information with respect to the deceased parents' lawyer and doctor is about them acting in their professional capacity, which would not be considered "personal information". They also submit that the titles 'Personal Support Worker' and 'Estate Executors' are other information that they did not consider to be "personal information."

[24] One of the affected parties submits that the records contain his personal information and the personal information of other identifiable individuals as defined in section 2(1) of the *Act*.

[25] Although the appellant did not provide representations in response to the police and the affected parties' representations, she provided a summary of her position. The relevant portion of her summary relating to this issue is the following:

With respect [to] the personal information issue, the appellant argues that the estate trustees and caregivers worked for her parents in their professional capacities. ...

[26] In response, one of the affected parties submits that their interactions with the police were not in their capacities as estate trustees, but rather as among one of the last known individuals to communicate with the deceased. The affected party submits that they did not provide statements or information to the police in a business or professional capacity.

---

<sup>8</sup> Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

<sup>9</sup> Orders P-1409, R-980015, PO-2225 and MO-2344.

<sup>10</sup> Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

[27] In addition, the affected party submits that even if the information related to them in their capacities as estate trustees, the information would still qualify as personal information because it reveals something of a personal nature about them including their opinions about the deceased.

[28] In his reply representations, one of the affected parties submits that the personal information at issue was not provided in the context of, nor does it relate to, him in any professional capacity. The affected party submits that the personal information consists of statements that were made in his capacity as a friend of the deceased.

[29] On my review of the records, I find that they contain "personal information" of identifiable individuals as defined by the *Act*. Specifically, they contain personal information of the appellant, the deceased, the affected parties and other identifiable individuals, which would fall within paragraphs (a), (b), (c), (d), (e), (g) and (h) of the definition in section 2(1) of the *Act*.

[30] I acknowledge that two of the affected parties in this appeal are the estate trustees of the deceased's estate. However, their interactions with the police and the information they provided to the police are in their personal role as a friend/confidant or a close relative of the deceased. As such, I do not find that the information they provided (which is contained in the records) is in their professional capacity as estate trustees.

[31] With respect to the caregivers, I note that much of the information they provided to the police have been disclosed to the appellant. Information about their names, addresses, date of births, and ethnicity have not been disclosed. I find that this type of information is the personal information of the caregivers as it reveals something of a personal nature of them.

[32] I also find that Detective 1's memorandum notes for October 3, 2017 and December 9, 2017 contain personal information only of individuals other than the appellant. Accordingly, because these records do not contain the personal information of the appellant, Part I of the *Act* applies to them and I must consider whether these records are exempt pursuant to the mandatory personal privacy exemption at section 14(1) of the *Act*.

[33] In addition, I find that the remaining records at issue contain the personal information of the appellant and other identifiable individuals. Accordingly, Part II of the *Act* applies to these records and I must consider whether these records are exempt pursuant to the discretionary personal privacy exemption at section 38(b) of the *Act*.

[34] I will now turn to consider the application of sections 14(1) and 38(b) to the

withheld personal information of the individuals other than the appellant and one of the affected parties.<sup>11</sup>

**B: Does the mandatory exemption at section 14(1) or the discretionary exemption at section 38(b) apply to the information at issue?**

[35] Section 36(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 38 provides a number of exemptions from this right.

[36] Under section 38(b), found in Part II, where a record contains personal information of both the requester and other individuals, and disclosure of the information would be an “unjustified invasion” of the other individuals’ personal privacy, the institution may refuse to disclose that information to the requester.

[37] In contrast, under section 14(1), found in Part I, 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 [section 14(1)(f)].

[38] In applying either of the section 38(b) or 14(1) exemptions, sections 14(2) and (3) help in determining whether disclosure would or would not be an unjustified invasion of privacy. Also, section 14(4) lists situations that would not be an unjustified invasion of personal privacy.

[39] If the records are not covered by a presumption in section 14(3), section 14(2) lists various factors that may be relevant in determining whether disclosure of the personal information would be an unjustified invasion of personal privacy and the information will be exempt unless the circumstances favour disclosure.<sup>12</sup>

[40] The police claim that the personal information at issue falls within the scope of the presumption at section 14(3)(b) and the factor at section 14(2)(h). Three of the affected parties also claim that the factors at section 14(2)(f) and 14(2)(h) are applicable to the personal information at issue.<sup>13</sup> One of the affected parties also claims that the factor at section 14(2)(i) is applicable. In addition, the possible application of the compassionate grounds exception at section 14(4)(c) of the *Act* is at issue in this appeal.

---

<sup>11</sup> As stated earlier, this affected party consented to the disclosure of his personal information.

<sup>12</sup> Order P-239.

<sup>13</sup> I note that one of the affected parties relied on the factor at section 14(2)(e). However, the submissions on this factor relates to a different affected party. As such, I will not be considering this factor.



[41] Sections 14(2)(f), 14(2)(h), 14(2)(i), 14(3)(b) and 14(4)(c) read:

14(2) A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

(f) the personal information is highly sensitive;

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

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

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

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

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

(c) discloses personal information about a deceased individual to a spouse or close relative of the deceased individual, and the head is satisfied that, in the circumstances, the disclosure is desirable for compassionate reasons.

### ***Analysis and findings***

#### *14(2)(f): highly sensitive*

[42] The affected parties raise the factor in section 14(2)(f). They submit that the police's determination of the cause of death is highly sensitive.

[43] One of the affected parties submits that the personal information is highly sensitive given the circumstances at play, the nature of the information and the subject matter. He also rely on Order P-1535, where the adjudicator held that based on the volatile or adversarial nature of the relationship between the parties and the emotional intensity of the situation apparent from the records, the personal information may be highly sensitive in nature.

[44] To be considered highly sensitive, however, there must be a reasonable expectation of significant personal distress if the information is disclosed.<sup>14</sup>

[45] In Order MO-2980, Adjudicator Colin Bhattacharjee found that whether an individual's name and address is highly sensitive depends on the context, and should be assessed on a case-by-case basis. Specifically, Adjudicator Bhattacharjee wrote:

An individual's name and address is not always sensitive information. For example, the names and addresses of most individuals appear in publically accessible telephone or online 411 directories and are clearly not highly sensitive in that context.

However, the names and addresses of individuals have greater sensitivity when this information is collected by the state or agencies of the state such as the police ...

[46] I agree with and adopt the above reasoning for the purpose of this appeal.

[47] In this case, the affected parties' personal information (such as their name, date of birth and address) is contained in police records. I, therefore, find that the context suggests the personal information is highly sensitive. As such, disclosure of their personal information may likely cause the affected parties significant personal distress as the factor in section 14(2)(f) requires. As a result, I give this factor some weight.

*14(2)(h): supplied in confidence*

[48] Both the police and the affected parties raise the factor in section 14(2)(h).

[49] The police submit that they collected the affected parties' personal information in the course of their investigation. They submit that police investigations imply an element of trust that the law enforcement agency will act responsibly in the manner in which it deals with the personal information.

[50] One of the affected parties submits that the personal information at issue was provided to law enforcement officers at a time of emotional distress with the understanding that it would be kept confidential. He submits that the personal information at issue was itself held in confidence by him and was only supplied to the police on the expectation that it would be kept confidential.

[51] In addition, the affected party relies on Order PO-1767 for the principle that where there is a reasonably held expectation of confidentiality, that expectation is a meaningful and important factor to be considered.

---

<sup>14</sup> Orders PO-2518, PO-2617, MO-2262 and MO-2344.

[52] In order for section 14(2)(h) to apply, both the individual supplying the information and the recipient must have an expectation that the information will be treated confidentially, and that expectation must be reasonable in the circumstances. Thus, section 14(2)(h) requires an objective assessment of the reasonableness of any confidentiality expectation.<sup>15</sup>

[53] In the circumstances, I find that the personal information at issue was supplied by the affected parties and other identifiable individuals in confidence and that the factor in section 14(2)(h), which weighs against disclosure, applies.

*14(2)(i): unfair damage to reputation*

[54] Two of the affected parties raise the factor in section 14(2)(i). They submit that disclosure of the personal information may unfairly damage the reputation of the deceased parents.

[55] The factor in section 14(2)(i) applies where disclosure of personal information may unfairly damage the reputation of another individual.

[56] Based on my review of the records, I find that this factor does not apply to the personal information relating to the affected parties or identifiable individuals. I find that the affected parties have not established that any individual's reputation (including the deceased parents) would be unfairly damaged by the disclosure of the personal information at issue.

*14(3)(b): investigation into violation of law*

[57] Even if no criminal proceedings were commenced against any individuals, section 14(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of law.<sup>16</sup> The presumption can also apply to records created as part of a law enforcement investigation where charges are subsequently withdrawn.<sup>17</sup>

[58] The police submit that the presumption against disclosure in section 14(3)(b) applies to the personal information at issue because it was collected for the explicit purpose of aiding a law enforcement investigation.

[59] One of the affected parties submits the disclosure is presumptively an unjustified invasion of privacy because the personal information at issue was provided in confidence to law enforcement officers investigating an incident that may have involved a violation of law. He also submits that the threshold for a justified invasion of privacy

---

<sup>15</sup> Order PO-1670.

<sup>16</sup> Orders P-242 and MO-2235.

<sup>17</sup> Orders MO-2213 and PO-1849.

under section 14(3)(b) is quite low.

[60] Two of the affected parties also submit that the personal information at issue was compiled as part of an investigation into the deaths of the appellant's parents and the possibility of a violation of the *Criminal Code of Canada*.

[61] I accept the police and affected parties' position. Based on the content of the records, it is clear that the personal information was compiled by the police and is identifiable as part of their investigation to determine the cause of death, which may result in a possible violation of the law. I therefore find that the personal information in the records fits within the ambit of the presumption against disclosure in section 14(3)(b).

[62] Therefore, I find that the disclosure of the personal information withheld under section 14(1) (i.e. the personal information in Detective 1's memorandum notes for October 3, 2017 and December 9, 2017) is presumed to constitute an unjustified invasion of personal privacy under section 14(3)(b). Accordingly, I find that this personal information qualifies for exemption under section 14(1) of the *Act*.

[63] Section 38(b) of the *Act* applies to the personal information that is subject to analysis pursuant to Part II of the *Act*, specifically, the appellant's own personal information where it is mixed with the personal information of other identifiable individuals, including her deceased parents. In determining whether the disclosure of the personal information at issue would be an unjustified invasion of personal privacy under section 38(b), this office will consider, and weigh, the factors and presumptions in sections 14(2) and (3) and balance the interests of the parties.<sup>18</sup> I concluded above that the personal information at issue is subject to the presumption at section 14(3)(b) and the factors at sections 14(2)(f) and 14(2)(h). I concluded above that section 14(2)(i) does not apply and, in my view, there are no other factors favouring disclosure. Considering and weighing the factors and presumption and balancing the interests of the parties, subject to my analysis on the application of section 14(4)(c) below, I find that disclosure of the personal information at issue would be an unjustified invasion of personal privacy under section 38(b).

*14(4)(c): disclosure is desirable for compassionate reasons*

[64] I will now consider the application of the exception in section 14(4)(c) to the personal information that I have found to be subject to section 14(1) or 38(b), as the case may be. The principle issue in relation to the disclosure of the personal information at issue is whether the exception to the exemption in section 14(4)(c) of the *Act* permits the disclosure of the appellant's deceased parents' personal information (some

---

<sup>18</sup> Order MO-2954.

of which is co-mingled with the information of other individuals).

[65] As the section 14(4)(c) exception can only apply to the personal information of the appellant's deceased parents, I will not be considering its application to the personal information that relates solely to other identifiable individuals.

[66] The application of section 14(4)(c) requires a consideration of the following questions, all of which must be answered in the affirmative in order for the section to apply:

1. Do the records contain the personal information of a deceased individual?
2. Is the requester a spouse or "close relative" of the deceased individual?
3. Is the disclosure of the personal information of the deceased individual desirable for compassionate reasons, in the circumstances of the request?<sup>19</sup>

*Parts 1 and 2: Do the records contain the personal information of a deceased individual and is the requester a spouse or "close relative" of the deceased individual?*

[67] The terms "close relative" and "spouse" are defined in section 2(1) of the *Act* as follows:

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

[68] I find that the records contain the personal information of two deceased individuals, specifically, the appellant's parents, and that the appellant is a "close relative" of these individuals as defined in the *Act*. Accordingly, I find that the first two requirements for the application of section 14(4)(c) have been met.

*Part 3: Is the disclosure of the personal information of the deceased individuals desirable for compassionate reasons, in the circumstances of the request?*

[69] With respect to the application of section 14(4)(c), the police submit that they supplied the appellant with a detailed synopsis of the events leading up to and surrounding the death of her parents. This included information about where and how the deaths occurred, when and how her parents were found, and up to the point of notification.

[70] In addition, the police rely on Order MO-2401, where Adjudicator Catherine

---

<sup>19</sup> Orders MO-2237 and MO-2245.

Corban upheld the institution's decision on their application of section 14(4)(c). In that order, the institution had granted access to the bulk of information contained in the record but did not disclose the personal information of affected parties as disclosure would constitute an unjustified invasion of the affected parties' personal privacy.

[71] Moreover, the police submit that the appellant was provided access to enough details to aid in the understanding of the circumstances surrounding the death of her parents, and to satisfy the compassionate grounds in section 14(4)(c).

[72] One of the affected parties submits that this office must balance the compassionate reasons in favour of disclosure with the privacy intrusion of disclosing sensitive personal information that was shared with the police in confidence.

[73] He points out that Order PO-3129 provides guidance on that balancing process. In that order, the adjudicator held that the analysis in section 21(4)(d) (the provincial equivalent of section 14(4)(c)) is not restricted to the consideration of compassion to the appellant alone. He submits that section 14(4)(c) requires that the disclosure be desirable for compassionate reasons in relation to all the circumstances relating to the request.

[74] He also submits that the privacy interests of other individuals should not automatically yield to the compassionate reasons that may call for full disclosure to the appellant.

[75] Two of the affected parties submit that the exception in section 14(4)(c) does not apply and that there is no compelling public interest in disclosure of the personal information under section 16.

[76] In their reply representations, they submit that the appellant has already been provided with sufficient information regarding the truth about the death of her parents, as well as the circumstances of their death.

[77] In addition, they submit:

... The circumstances of this request include information that may be used to identify the personal information, and identities of [us], or the caregivers and should not be disclosed to the requester. To the extent that information about the deceased, and [us] and the caregivers are co-mingled in the records, the institution appropriately exercised its discretion to withhold such records from disclosure as the protection of privacy the individuals outweighs the alleged compassionate grounds being asserted by the requester.

[78] In Order MO-2245, former Commissioner Brian Beamish ordered the disclosure of highly sensitive personal information about the circumstances surrounding the death of an individual to a close relative. In doing so, the former Commissioner Beamish

stated the following:

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 information 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. Again, on the question of what is "compassionate", I accept the evidence and representations of the appellant.

[79] I adopt this approach in this appeal. I accept that the appellant requires the information about the events surrounding her parents' death for closure. However, section 14(4)(c) requires that the disclosure be desirable for compassionate reasons in relation to all the circumstances relating to the request. After considering all the circumstances surrounding the request and appeal, I find the section 14(4)(c) exception does not apply to all of the withheld personal information. Accordingly, for most of the withheld information, I find that it is exempt under section 14(1) or 38(b) and should not be disclosed to the appellant.

[80] However, as the grieving daughter of the two deceased individuals, I find that the appellant is entitled to disclosure of at least some additional portions of the records for compassionate reasons. I have carefully reviewed the records in light of the positions of the parties and the circumstances of the appeal. While I am satisfied that the police carefully balanced the competing interests, including the compassionate reasons for and against disclosure with respect to some information it decided to disclose, I find that, in all the circumstances, additional information should be disclosed. I have highlighted this information on a copy of the severed records provided to the police along with a copy of this order, which I find falls within the section 14(4)(c) compassionate reasons exception.<sup>20</sup>

---

<sup>20</sup> To be clear, the additional information being disclosed does not include any of the affected parties' names, addresses, date of births, phone numbers, or ethnicity.

**C: Did the police exercise their discretion under section 38(b)? If so, should this office uphold the exercise of discretion?**

[81] The section 38(b) exemption is discretionary, and permits an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

[82] In addition, the Commissioner may find that the institution erred in exercising its discretion 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.

[83] In either case, this office may send the matter back to the institution for an exercise of discretion based on proper considerations.<sup>21</sup> This office may not, however, substitute its own discretion for that of the institution.<sup>22</sup>

[84] The police submit that they exercised their discretion to exempt information in favour of protecting the privacy of the affected parties and other identifiable individuals. The police also submit that they did not exercise their discretion in bad faith or for an improper purpose, besides taking into account all relevant and irrelevant considerations addressed in this appeal.

[85] In addition, the police submit that they considered the following factors when choosing not to disclose the personal information at issue:

- The information withheld was not personal information solely belonging to the appellant.
- The privacy of the other affected parties should be protected.

[86] Moreover, they submit that they balanced the access interests of the appellant with the privacy rights of other individuals. They submit that the intrusion on the personal privacy of the affected parties and other identifiable individuals through disclosure of their information would constitute an “unjustified invasion”, and prevails over the compassionate reasons provided in section 14(4)(c).

---

<sup>21</sup> Order MO-1573.

<sup>22</sup> Section 43(2).



[87] Two of the affected parties submit that the police properly exercised their discretion under section 38(b) to deny access to the personal information at issue. They point out that, in the police's decision letter, it states that the appellant met the criteria regarding compassionate disclosure but that only partial access should be granted after taking into account sections 14(1)(f), 14(3)(b), 38(a) and 38(b).

[88] Based on my review of all the parties' representations and the personal information at issue, I find that the police properly exercised their discretion. I find that the police took into account the above-noted two factors. The police also took into consideration the privacy rights of the appellant and other identifiable individuals. I am satisfied that the police did not act in bad faith or for an improper purpose. I am also satisfied from my review of the police's representations that the police took into account the fact that the records contain the personal information of the appellant and the compassionate grounds under section 14(4)(c). Accordingly, I uphold the police's exercise of discretion under section 38(b).

## **ORDER:**

1. I order the police to disclose to the appellant the information I have found not exempt under section 14(1) and/or 38(b) by providing her with a copy of the records by **March 24, 2021**, but not before **March 19, 2021**. I have provided a highlighted copy of the records with the police's copy of this order. To be clear, only the highlighted information should be disclosed to the appellant.
2. I uphold the police's decision to withhold the remaining personal information.
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 information disclosed to the appellant.
4. The timelines noted in order provision 1 may be extended if the police is unable to comply in light of the current COVID-19 situation, and I remain seized to consider any resulting extension request.

Original signed by: \_\_\_\_\_

Lan An  
Adjudicator

February 18, 2021  
\_\_\_\_\_