

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER PO-4190

Appeal PA19-00445

Ministry of the Solicitor General

September 27, 2021

**Summary:** This appeal considers an access request made under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to the Ministry of the Solicitor General (the ministry) for an audio recording of a 911 call related to a tragic incident involving the appellant's spouse. The ministry denied access to the 911 call, in its entirety, pursuant to the mandatory personal privacy exemption at section 21(1), the law enforcement exemptions at section 14(1)(d) (confidential source) and 14(1)(e) (endanger life or safety), and the health and safety exemption at section 20.

In this order, the adjudicator finds that the 911 call contains the personal information of the caller, as well as the appellant's spouse. While the call was made anonymously, the adjudicator finds that it would be possible to identify the caller from their voice. However, the adjudicator finds that by distorting the voice of the 911 caller, the individual would not be identifiable and the information in the recording would not qualify as the caller's personal information. With respect to the personal information of the appellant's spouse in the 911 call, the adjudicator finds that it should be disclosed on compassionate grounds under section 21(4)(d). She also finds that the law enforcement exemptions at sections 14(1)(d) and (e) and the health and safety exemption at section 20 do not apply to the 911 call. The adjudicator orders the ministry to disclose the 911 call, in part, to the appellant after having distorted the voice of the 911 caller.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, RSO 1990, c F31, sections 2(1) (definition of "personal privacy"), 14(1)(d), 14(1)(e), 20, 21(1), 21(3)(b) and 21(4)(d).

**Orders and Investigation Reports Considered:** Orders MO-2245, MO-3699, MO-3961, PO-4020 and PO-4027.

## **OVERVIEW:**

[1] This order disposes of issues raised as a result of an appeal of an access request made to the Ministry of the Solicitor General (the ministry) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for a 911 call relating to a tragic incident involving the requester's husband.

[2] The ministry located the responsive record, an audio recording of a 911 call, approximately 17 seconds long. The ministry denied access to it claiming the discretionary exemptions at section 49(a), read with sections 14(1)(d) (law enforcement, confidential source) and 20 (danger to safety or health) and 21(1) (personal privacy), as well as section 49(b) (personal privacy) of the *Act*.

[3] The requester, now the appellant, appealed the ministry's decision to the Information and Privacy Commissioner of Ontario (the IPC). A mediator was appointed to explore the possibility of resolving the issues in the appeal.

[4] During mediation, the ministry maintained its decision to deny access to the 911 call. It stated however, that it was no longer claiming that sections 49(a) or (b) apply, as the record does not contain the personal information of the appellant. The ministry further advised that in addition to the exemptions already claimed, it was now also relying on the exemption in section 14(1)(e) (endanger life or safety) to deny access to the responsive record. The ministry issued a revised decision letter clarifying the exemptions claimed.

[5] The appellant confirmed that she continues to seek access to the 911 call and the file was moved to the adjudication stage where an adjudicator may conduct an inquiry.

[6] As the adjudicator assigned to the appeal, I decided to conduct an inquiry. I sought and received representations from both parties. Representations were shared in accordance with the IPC's *Code of Procedure and Practice Direction 7*.

[7] For the reasons that follow, I find that the 911 call contains the personal information of the individual who made the 911 call (the caller), as well as the appellant's spouse. However, I find that by distorting the voice of the caller, that individual would not be identifiable and the information in the recording would not qualify as the caller's personal information. I find that the personal information of the appellant's spouse in the 911 call should be disclosed to her on compassionate grounds under section 21(4)(d). I also find that the discretionary exemptions for law enforcement at sections 14(1)(d) and (e) and health and safety at section 20, do not apply to the 911 call.

[8] I order the ministry to disclose the 911 call to the appellant, after having distorted the voice of the caller.

## **RECORD:**

[9] The record at issue is an audio recording of a 911 call (the 911 call). It is approximately 17 seconds long.

## **ISSUES:**

- A. Does the 911 call contain “personal information” as defined in section 2(1) and, if so, to whom does it relate?
- B. Does the mandatory personal privacy exemption at section 21(1) apply to the 911 call?
- C. Do either of the discretionary law enforcement exemptions at section 14(1)(d) or (e) apply to the 911 call?
- D. Does the discretionary health and safety exemption at section 20 apply to the 911 call?

## **DISCUSSION:**

### **Issue A: Does the 911 call contain “personal information” as defined in section 2(1) and, if so, to whom does it relate?**

[10] The ministry claims that the 911 call is exempt from disclosure under the mandatory personal privacy exemption at section 21(1) of the *Act*. For that exemption to apply, the record must contain “personal information.” “Personal information” is defined in section 2(1) of the *Act* as “recorded information about an identifiable individual.” Section 2(1) sets out a non-exhaustive list of examples of “personal information” 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,

(g) the views or opinions of another individual about the individual, and

(h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual[.]

[11] To qualify as personal information, the information must be about the individual in a personal capacity and not a professional, official or business capacity.<sup>1</sup> Also, it must be reasonable to expect that an individual may be identified if the information is disclosed.<sup>2</sup>

### ***Representations***

[12] The ministry argues that the 911 call, which relates to a fatal incident involving the appellant's spouse, contains recorded information about an identifiable individual, within the meaning of the introductory wording of the definition of "personal information" in section 2(1). In particular, the police submit that the 911 call reveals the voice of the caller and that caller is identifiable by their voice.

[13] In support of its position, the ministry refers to Order PO-4020 in which the adjudicator found that a caller's voice on an audio recording of a 911 call can reveal "tone and inflection" which could identify a caller even if their name was withheld. The ministry submits that the same holds true in this instance, where the individual's voice alone is sufficient to identify the caller, even if other identifying information is not part of the record.

[14] The ministry explains that the Ontario Provincial Police (the OPP) investigated the incident and that while the OPP was unable to identify the caller, the ministry and the OPP are both concerned that the appellant or someone else who hears the 911 call may be able to do so.

[15] In her representations, the appellant did not provide any submissions that directly address the issue of whether the 911 call contains "personal information" and, if so, to whom that personal information belongs. However, in her representations she submits that she believes that the caller is "close to [her] in some way" and that it is important to her to know who made the call.

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

[16] I have considered the 911 call and I find that it contains the personal information of the caller, as well as that of the appellant's spouse. I find therefore, that the 911 call at issue contains "recorded information of an identifiable individual" as contemplated by

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<sup>1</sup> Orders P-257, P-427, P-1412, R-980015, MO-1550-F and PO-2224.

<sup>2</sup> Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

the definition of “personal information” in section 2(1).

[17] The 911 call contains the name of the appellant’s spouse with other personal information about them as contemplated by paragraph (h) of the definition of “personal information.” I find therefore, that the call contains the personal information of the appellant’s spouse. I also find that the 911 call does not contain the personal information of the appellant as defined in section 2(1). As the 911 call contains the personal information of the appellant’s spouse but not that of the appellant, I will consider whether the mandatory personal privacy exemption at section 21(1) applies to it, below.

[18] The 911 call also contains the caller’s voice. For reasons I will discuss in more detail below, I accept that in this case, disclosure of the caller’s voice would render them identifiable within the meaning of the introductory wording of the definition of “personal information.” Moreover, if the caller’s voice were disclosed, it would identify their sex, which is “personal information” within the meaning of paragraph (a) of the definition. I accept that in this case, disclosure of the caller’s sex together with their voice may further facilitate their identification and therefore, I find that the call contains the caller’s personal information.

[19] Previous orders that have considered audio recordings of 911 calls have contemplated whether a caller’s voice, which reveals tone and inflection, is “personal information” within the meaning of the definition at section 2(1).<sup>3</sup> In Order MO-3699 the adjudicator considered a 911 call made by an employee at their workplace, regarding another employee. In the context of that appeal, the adjudicator found that because the caller made the call in their business capacity, it did not contain their personal information. However, the adjudicator noted that had the 911 call not been made in the caller’s business capacity, the caller’s voice, tone and inflection may have qualified as the caller’s personal information.

[20] In Order MO-3961, the adjudicator considered disclosure of an audio recording of a 911 call about a fatal incident involving the appellant’s brother. The adjudicator found that even if other personal identifiers were removed, it would be possible to identify the caller based on their voice. In making this finding, she noted the specific circumstances of that appeal where the appellant not only acknowledged that they had some degree of familiarity with their brother’s friends and acquaintances, but also conceded that they may be able to identify the caller. She further found that if the caller is identifiable by their voice, their voice qualifies as their personal information as defined in section 2(1).

[21] As noted by the ministry, in Order PO-4020, the adjudicator also considered an audio recording of a 911 call and found that it contained “personal information” that might identify the caller were the recording disclosed, even if the caller’s name was

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<sup>3</sup> Orders MO-3699 and PO-4020.

withheld. This personal information included the caller's voice, which the adjudicator noted revealed their tone and inflection.

[22] In Order PO-4027, the adjudicator considered the audio recordings of two 911 calls seeking police assistance following a motor vehicle accident, in which neither caller identified themselves. She rejected the ministry's argument that the calls contained the callers' personal information because their voices "including their tone and inflection, when combined with the content of their discussions with the 911 dispatchers, which includes their actions and observations [...] render[ed] them identifiable." She acknowledged that the calls revealed information about the callers, which could conceivably fit within the definition of personal information.<sup>4</sup> However, she found that, given the context in which the calls were made, it was not reasonable to expect that either caller would be identified if the information were disclosed, as required by the introductory wording of the definition of personal information. In reaching this conclusion, she noted that the accident occurred on a busy 400-series highway where any number of individuals on the highway could have called 911 to request assistance. She also noted that given the size and location of the callers' cities of residence, disclosing the limited personal information that the calls contained could not reasonably result in them being identified.

[23] In my view, the circumstances of the current appeal can be distinguished from those in Order PO-4027 based on the requirement that "personal information" be "recorded information about an identifiable individual." Unlike Order PO-4027, where the 911 callers were not known to the appellant and given the circumstances, any number of individuals could have made the calls, both the ministry and the appellant in this appeal believe that the caller is known to the appellant and that they could be identified by their voice. Given the context and content of the call, I accept that it is reasonable to expect that this might occur were the audio recording disclosed in its current form. Because I accept that it is reasonable to expect the caller may be identified by their voice, I am satisfied that the audio recording of the 911 call contains the "personal information" of the caller for the purposes of the *Act*.

[24] I note that in Order MO-3961, mentioned above, where the adjudicator found that, in the specific circumstances of that appeal, it might be possible for the appellant to identify the 911 caller, based on their voice, she further found that if the caller's voice were to be distorted, it would not be possible to identify them. She stated:

With the voice distorted, I find that the individual would not be identifiable and, therefore, the audio recording would not contain that individual's personal information. Accordingly, the personal privacy exemption cannot apply to the caller's information, with the caller's voice distorted.

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<sup>4</sup> For example, their sex (paragraph (a)), the city where they live (paragraph (d)), and their views or opinions regarding the accident (paragraph (e)).

[25] In Order MO-3961, the adjudicator ordered the Durham Regional Police Services Board to disclose the audio of the 911 call to the appellant, having distorted the voice of the caller.

[26] The circumstances of this appeal are similar to those in Order MO-3961 and I agree with the approach taken in that order. I am satisfied that if the voice of the 911 caller was distorted, the caller would not be identifiable to the appellant. Accordingly, I will order the ministry to distort the caller's voice in the 911 call to achieve the same result as in that order. As, with distortion, the 911 call will not contain the caller's personal information, the mandatory personal privacy exemption at section 21(1) cannot apply to the information about the caller.

**Issue B: Does the mandatory exemption at section 21(1) apply to the 911 call?**

[27] Even if, as I found above, distorting the voice of the 911 caller means the 911 call does not contain the caller's personal information, the record still contains the personal information of the appellant's spouse. Where a requester seeks personal information of another individual, section 21(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 21(1) applies. Therefore, I must now consider whether the appellant's spouse's personal information in the 911 call is subject to the mandatory personal privacy exemption at section 21(1).

[28] The exceptions at sections 21(1)(a) to (e) are relatively straightforward. If the information fits within any of paragraphs (a) to (e), it is not exempt from disclosure.

[29] The section 21(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 21. Sections 21(2) and (3) provide guidance in determining whether disclosure would be an unjustified invasion of personal privacy. Section 21(4) lists situations that would not be an unjustified invasion of personal privacy.

[30] If any of paragraphs (a) to (h) of section 21(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 21. Once established, a presumed unjustified invasion of personal privacy under section 21(3) can only be overcome if section 21(4) or the "public interest override" at section 23 applies.<sup>5</sup>

[31] If no section 21(3) presumption applies, section 21(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy.<sup>6</sup> In order to find that disclosure

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<sup>5</sup> *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.).

<sup>6</sup> Order P-239.

does not constitute an unjustified invasion of personal privacy, one or more factors and/or circumstances favouring disclosure in section 21(2) must be present. In the absence of such a finding, the exception in section 21(1)(f) is not established and the mandatory section 21(1) exemption applies.<sup>7</sup>

[32] The ministry submits that the 911 call is subject to exemption under section 21(1) as a result of the application of the presumption at section 21(3)(b) (investigation into possible violation of law). The ministry also notes that it considered the potential application of section 21(4)(d) (compassionate reasons) but argues that it does not apply in the circumstances.

***Section 21(3)(b): investigation into a violation of law***

[33] Under section 21(3)(b), the 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[.]

[34] Even if no criminal proceedings were commenced against any individuals, as is the case here, section 21(3)(b) may still apply. The presumption only requires that there be an *investigation* into a possible violation of law.<sup>8</sup>

[35] The ministry submits that the 911 call made to the Provincial Communications Centre (PCC) led to the OPP being dispatched for the purpose of investigating the circumstances, protecting public safety and laying charges if warranted. The ministry submits that the OPP attended the location of the call, where an individual was subsequently involved in a fatal incident. It submits that this was an incident that could have led to charges being laid, depending on the conclusion of the investigation. It notes that the fact that no charges were laid is not determinative or relevant for the purposes of the presumption in section 21(3)(b).

[36] I accept that the presumption in section 21(3)(b) applies to the personal information remaining at issue in the 911 call, the appellant's spouse's personal information, because the evidence before me demonstrates that there was an OPP investigation into the tragic incident that resulted in their death. As a result, the disclosure of the 911 call would constitute a presumed unjustified invasion of the personal privacy of the appellant's spouse.

[37] Because a presumed unjustified invasion of personal privacy under section 21(3) can only be overcome if one of the exceptions in section 21(4) or the "public interest override" at section 23 applies, it is not necessary for me to consider whether the

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<sup>7</sup> Orders PO-2267 and PO-2733.

<sup>8</sup> Orders P-242 and MO-2235.



factors at section 21(2) apply in this case. I will however, consider whether section 21(4)(d) applies in the circumstances.

***Section 21(4)(d): compassionate grounds***

[38] The ministry submits that it considered and dismissed the possibility that compassionate grounds for disclosure of the 911 call, as contemplated in section 21(4)(d), exist in the circumstances in this case. For the reasons set out below, I disagree.

[39] As previously stated, if any of paragraphs (a) to (d) of section 21(4) apply, disclosure is not an unjustified invasion of personal privacy; regardless of whether a presumption against disclosure in section 21(3) has been established or whether the factors at section 21(2) weigh against disclosure, the information is not exempt under section 21(1). Section 21(4)(d) reads:

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

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

[40] The terms “close relative” and “spouse” are defined in section 2(1) of the *Act*.

[41] Personal information about a deceased individual can include information that also qualifies as that of another individual. Where this is the case, the “circumstances” to be considered in question would include the fact that the personal information of the deceased is also the personal information of another individual. The factors and circumstances in section 21(2) may provide assistance in this regard, but the overall circumstances must be considered and weighed in any application of section 21(4)(d).<sup>9</sup>

*Representations on compassionate grounds*

[42] The ministry submits that the death of the individual who took their own life, after being found by the OPP at the location identified by the 911 call, resulted in an investigation by the province’s Special Investigations Unit (SIU). The ministry submits that the mandate of the SIU is to investigate matters involving police officers where there has been a death. The ministry submits that the report that was completed by the SIU was subsequently posted on the SIU website and includes a written synopsis of the anonymous call. The ministry submits that the report provided the appellant with information about her spouse’s death that would meet the objective of section 21(4)(d), which it states is to assist close family members to understand the circumstances that

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<sup>9</sup> Order MO-2237.

led to a loved one's death.

[43] In her representations, the appellant does not make any submissions addressing whether disclosure of her spouse's personal information is subject to the exemption at section 21(1).

*Analysis and finding on compassionate grounds*

[44] Section 21(4)(d) requires a consideration of the following questions, all of which must be answered in the affirmative in order for the section to apply:

1. Do 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>10</sup>

[45] I have already found that the 911 call contains the personal information of a deceased individual meeting the requirement of part one of the test. Regarding the second part of the test, there is no dispute that the requester is the spouse of the deceased. The only issue to be decided then, with respect to section 21(4)(d), is whether the disclosure of the personal information of the appellant's spouse, as it appears in the 911 call, is "desirable for compassionate reasons in the circumstances of the request."

[46] 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 Commissioner stated that after the death of an individual, it is that person's spouse or close relatives who are best able to act in their own "best interests" with regard to whether or not particular kinds of personal information would assist them in the grieving process. He noted that the legislative intent of the section included recognition that, "for surviving family members, greater knowledge of the circumstances of their loved one's death is by its very nature compassionate." He further stated:

Losing a loved one is a sad and difficult process. Section 14(4)(c) of the *Act*<sup>11</sup> was designed to allow families to have the records they feel they require in order to grieve in the way they choose.<sup>12</sup>

[47] I agree with the comments made by Commissioner Beamish and, in my view, his approach is relevant in the context of this appeal and helpful to my determination of

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<sup>10</sup> Orders MO-2237 and MO-2245.

<sup>11</sup> Section 14(4)(c) is the equivalent of section 21(4)(d) in the *Municipal Freedom of Information and Protection of Privacy Act*.

<sup>12</sup> Order MO-2245.

part three of the test.

[48] While I acknowledge that the appellant is already aware of the content of the 911 call based on the written synopsis of it in the SIU report, I have considered the appellant's clear indication that access to the 911 call would assist her in finding closure in dealing with this tragic situation. I acknowledge that part of the appellant's stated reason for wishing to hear the audio of the 911 call is in order to help her identify who made the call. I also acknowledge that ordering the ministry to distort the 911 caller's voice before disclosing the 911 call will render the caller non-identifiable. Despite this, I remain of the view, and I find, that because the 911 call contains the personal information of the appellant's spouse, in the circumstances of this case its disclosure to her, even distorted, is desirable for compassionate reasons as contemplated by part 3 of the test for section 21(4)(d). In keeping with the approach taken by Commissioner Beamish in Order MO- 2245 set out above, it is not for the ministry or the IPC to presume what type of information would assist the appellant in the grieving process.

[49] Accordingly, subject to my determination below as to whether the discretionary exemptions at sections 14(1)(d) or (e) or section 20 apply to the 911 call, on compassionate grounds, I will order that the 911 call be disclosed to the appellant after distortion of the caller's voice.

**Issue C: Do either of the discretionary law enforcement exemptions at section 14(1)(d) or (e) apply to the 911 call?**

[50] The ministry claims that the 911 call is exempt from disclosure in its entirety under the law enforcement exemptions at sections 14(1)(d) and/or (e). Those sections read:

A head may refuse to disclose a record if the disclosure could reasonably be expected to,

(d) disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by a confidential source;

(e) endanger the life or physical safety of a law enforcement officer or any other person[.]

[51] The term "law enforcement" is used in several parts of section 14, and is defined in section 2(1) as follows:

"law enforcement" means,

(a) policing,

(b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, or

(c) the conduct of proceedings referred to in clause (b).

[52] Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context.<sup>13</sup>

[53] It is not enough for an institution to take the position that the harms under section 14 are self-evident from the record or that the exemption applies simply because of the existence of a continuing law enforcement matter.<sup>14</sup> For sections 14(1)(e) and (d) to apply, the institution must demonstrate a risk of harm that is well beyond the merely possible or speculative although it need not prove that disclosure will in fact result in such harm. How much and what kind of evidence is needed will depend on the type of issue and seriousness of the consequences.<sup>15</sup>

#### ***Section 14(1)(d): confidential source***

[54] To establish that this exemption applies, the ministry must demonstrate a reasonable expectation that the identity of the source or the information given by the source would remain confidential in the circumstances.<sup>16</sup>

#### *Representations*

[55] The ministry submits that the 911 call was created by the OPP PCC as a result of an anonymous 911 call received by the PCC and to which the OPP responded. It submits that, as confirmed by previous orders, the OPP is an agency which has the function of enforcing and regulating compliance with the law.<sup>17</sup>

[56] In support of its position that the disclosure of the 911 call would reveal a confidential source, the ministry says it is self-evident that any caller who makes an anonymous call to 911 does so with the expectation that their identity will remain confidential. It submits that two considerations specific to the particular record at issue support this assertion. First, the ministry notes that the call was made from a public pay phone. It submits that "[s]ince a significant majority of Canadians today have personal cell phones, it is likely that the person placing a call from a public telephone would do so with the specific aim of ensuring that their identity would remain anonymous."

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<sup>13</sup> *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).

<sup>14</sup> Order PO-2040 and *Ontario (Attorney General) v. Fineberg*, cited above.

<sup>15</sup> *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4.

<sup>16</sup> Order MO-1416.

<sup>17</sup> The ministry cites Order PO-3031, for example.

[57] Second, the ministry notes that the call is very brief, approximately 17 seconds in length, and the caller declined to give their name or any identifying information about themselves to the PCC. The ministry submits that this suggests that the caller had no intention of revealing their identity to the OPP.

[58] The ministry submits that, taking these two considerations into account, the caller is a "confidential source of information" within the meaning of section 14(1)(d) and disclosure of the record "could reveal this confidential source of information if, for example, the caller's identity can be determined by the appellant." It also submits that the information was provided in "respect of a law enforcement matter" as required by the exemption, as it relates to an incident to which the OPP were dispatched. It submits that police response to a 911 call qualifies as a law enforcement matter.

[59] In the appellant's representations, which confirm that she is aware of the content of the call, the appellant does not specifically address section 14(1)(d). Nonetheless, several of her submissions relate to the application of this exemption. For example, the appellant acknowledges that the caller did not give a name, but points out that "the caller also did not state that they wanted to be kept anonymous."

[60] She also submits that there is a contradiction between the ministry's position that the caller wished to remain anonymous and the circumstances of the call. She argues that the caller states that they are being held hostage by her spouse and says that if the caller was actually being held hostage by the appellant's spouse, they would want to be identified by the OPP.

#### *Analysis and finding*

[61] By claiming section 14(1)(d), the ministry takes the position that the 911 caller is a confidential source and disclosure of the 911 call would disclose their identity and/or information provided only by them. The ministry argues that the caller is a confidential source based on an assumption that the caller wished to remain anonymous. The ministry submits that it believes that the caller wished to remain anonymous because the caller did not identify themselves by name and because they made the call on a public telephone. Even if the ministry's assumption is accurate, I do not accept that it supports the requirements of the exemption – that there is a reasonable expectation that the caller's identity or the information that they provided in the 911 call would remain confidential in the circumstances. I have listened to the audio of this call, and the caller does not specifically state that they are making the call anonymously or that they wish to remain anonymous. Also, there is no evidence before me to suggest that the caller was provided with specific assurances by the OPP, either generally or specifically, that their identity or the information that they provided in their call would remain confidential.

[62] I have indicated above that I will order the ministry to distort the caller's voice in the 911 call prior to disclosing it to the appellant, rendering the caller non-identifiable.

With the call distorted in this manner, I do not accept that its disclosure can be said to reasonably be expected to disclose the identity of a confidential source.

[63] I also do not accept that the evidence before me demonstrates that disclosure of the 911 call, even distorted, could reasonably be expected to disclose information furnished only by a confidential source. As noted above, the content of the call was reproduced in the SIU report. Even if the caller could be said to be a confidential source, in my view, the fact that a written synopsis of the call was included in the SIU report does not support a conclusion that the caller had a reasonable expectation that the information provided in the call would be kept in confidence.

Under these circumstances, I do not accept that the caller had a reasonable expectation that either their identity or the information that they provided in the 911 call would remain confidential in the circumstances. I find that section 14(1)(d) has not been established and therefore, it does not apply in the circumstances of this appeal.

***Section 14(1)(e): life or physical safety***

[64] In order for the exemption in section 14(1)(e) to apply, the ministry must provide evidence demonstrating that disclosure of the record could reasonably be expected to endanger the life or physical safety of a law enforcement officer or any other person. The term "person" is not limited to a particular identifiable individual, and may include the members of an identifiable group or organization.<sup>18</sup> A person's subjective fear is a relevant consideration, but it may not be enough to justify the exemption.<sup>19</sup>

*Representations*

[65] To support its claim that section 14(1)(e) applies to the 911 call, the ministry submits that:

- it is concerned for the safety of the caller, were the caller's identity to be revealed to the appellant;
- there is a reasonable basis for believing that endangerment to the caller could result from disclosure, given that:
  - the caller wished to remain anonymous because the call was made from a public phone and the caller did not identify themselves, and
  - the context in which the call was placed is extremely sensitive and confidential because the call resulted in the OPP being dispatched to a location where an individual who subsequently took their own life.

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<sup>18</sup> Order PO-1817-R.

<sup>19</sup> Order PO-2003.

[66] The ministry also makes brief representations on the application of this exemption that it submitted in confidence. Those portions of the ministry's representations were withheld from the appellant under the IPC's *Code of Procedure and Practice Direction 7*.

[67] The appellant does not specifically reference section 14(1)(e) in her representations but she submits that she is a 56 year-old woman, grieving her spouse's death and the ministry's argument that, if she could identify the caller by their voice, the caller would be in danger "is ridiculous."

### *Analysis and finding*

[68] I find that the evidence before me, including that submitted by the ministry in the confidential portions of its representations, is insufficient to establish that section 14(1)(e) applies.

[69] The ministry suggests that if the 911 call were disclosed and the appellant were able to identify the caller, the caller's life or physical safety would be in danger. Although the ministry's confidential representations provide some indication of why it believes this to be the case, I find that the evidence falls short of demonstrating how the disclosure of the 911 call could reasonably be expected to endanger the life or physical safety of the caller, or any other individual. The underlying suggestion is that the caller would be subject to harm by the appellant or another individual but, in my view, the ministry does not provide a reasonable basis to support such a conclusion and its evidence regarding the expectation of harm is speculative at best.

[70] Moreover, for the exemption at section 14(e) to apply, the victim of the forecasted harm must be identifiable. As noted above, I will order the ministry to distort the voice of the 911 caller prior to disclosing it to the appellant, rendering the caller unidentifiable. With the 911 call distorted in this manner, in my view, there is insufficient evidence to conclude that the life or physical safety of the 911 caller, or that of any other individual, would be endangered as a result of its disclosure.

[71] Accordingly, I find that section 14(1)(e) does not apply.

### **Issue D: Does the discretionary exemption at section 20 apply to the 911 call?**

[72] The ministry also claims section 20 to deny access to the 911 call. This exemption is very similar to section 14(1)(e) and reads:

A head may refuse to disclose a record where the disclosure could reasonably be expected to seriously threaten the safety or health of an individual.

[73] The IPC has treated sections 20 and 14(1)(e) of the *Act* similarly. As with section

14(1)(e), for section 20 to apply, the ministry must provide detailed evidence about the potential for harm. It must demonstrate a risk of harm that is well beyond the merely possible or speculative although it need not prove that disclosure will in fact result in such harm. How much and what kind of evidence is needed will depend on the type of issue and seriousness of the consequences.<sup>20</sup>

[74] As with section 14(1)(e), when considering this section, an individual's subjective fear, while relevant, may not be enough to justify the exemption.<sup>21</sup> The term "individual" is not necessarily confined to a particular identified individual, and may include any member of an identifiable group or organization.<sup>22</sup>

### ***Representations***

[75] Acknowledging that the exemptions at sections 20 and 14(1)(e) have been treated similarly, in support of its position that section 20 applies to the 911 call, the ministry submits the same representations as it submitted in support of its position that the law enforcement exemption at section 14(1)(e) applies. They are set out above. I will not reproduce them here.

[76] The appellant does not specifically address section 20 in her representations but, as noted above in my review of the law enforcement exemptions, she submits that the ministry's argument that, if she could identify the caller by their voice, the caller would be in danger "is ridiculous."

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

[77] As noted above, given the similarities between section 20 which contemplates a threat to safety or health and section 14(1)(e) which contemplates possible harm to life or physical safety, the IPC applies the same evidentiary requirements. Both the ministry and the appellant provided the same representations for these exemptions which I considered above in my analysis of section 14(1)(e), where I found that the exemption did not apply. Accordingly, for the same reasons as those set out in my analysis on section 14(1)(e), I find that the ministry has not provided sufficient evidence to establish that disclosure of the 911 call could reasonably be expected to seriously threaten the safety or health of the individual who made the call or any other person.

[78] Additionally, as with section 14(1)(e), for section 20 to apply, the victim of the forecasted harm must be identifiable. Given that I will order the ministry to distort the voice of the 911 caller prior to disclosing it to the appellant, in my view, there is insufficient evidence to conclude disclosure of the 911 call could reasonably be expected to seriously threaten the safety or health of the caller or any other individual.

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<sup>20</sup> *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII), at paras. 52-4.

<sup>21</sup> Order PO-2003.

<sup>22</sup> Order PO-1817-R.



[79] As a result, I find that section 20 does not apply.

### **SUMMARY OF FINDINGS:**

[80] Although I find that the 911 caller's voice is their personal information, I find that if their voice is distorted, they would not be identifiable and the 911 call would not contain their personal information.

[81] I also find that the 911 call contains personal information of the appellant's spouse that should be disclosed to the appellant on compassionate grounds under section 21(4)(d).

[82] Finally, I find that the discretionary exemptions addressing law enforcement at sections 14(1)(d) and (e) and health and safety at section 20, do not apply to the 911 call.

[83] I will order the ministry to disclose the 911 call to the appellant, after having distorted the voice of the caller.

### **ORDER:**

1. I order the ministry to disclose the audio of the 911 call to the appellant by **November 12, 2021**, but not before **October 27, 2021**, subject to the following condition:
  - the voice of the 911 caller is to be distorted.

If the appellant does not wish to receive an audio copy of the 911 call in which the caller's voice is distorted, she is to notify the ministry. The disclosure date above provides the ministry with additional days to disclose the record to allow time for the appellant to notify the ministry of her decision.

2. In order to verify compliance with order provision 1, I reserve the right to require the ministry to provide the IPC with a copy of the 911 call it discloses to the appellant.

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

\_\_\_\_\_ September 27, 2021