

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4563

Appeal PA23-00419

Ministry of the Solicitor General

October 29, 2024

Summary: A deceased woman's mother asked the ministry for records relating to her daughter's death. The ministry decided to grant partial access to the deceased's personal information contained in Ontario Provincial Police records. The deceased woman's surviving husband opposes disclosure to her mother of any information about her death. The adjudicator upholds the ministry's decision that there are compassionate reasons to disclose some of the deceased's personal information to her mother under section 21(4)(d) (compassionate reasons). She discusses how to consider competing positions of spouses and close relatives where compassionate reasons are established under section 21(4)(d).

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 2(1) (definition of "personal information"), 21(1), 21(4)(d), 49(b) and 66(a).

Orders Considered: Orders MO-2237, MO-2245 and MO-2515.

OVERVIEW:

[1] The requester's daughter died under circumstances that were reported to the Ontario Provincial Police (OPP) as suspicious. An OPP investigation was closed after concluding that her death was not the result of criminal wrongdoing.

[2] The requester made a request to the Ministry of the Solicitor General¹ (the

¹ The Ministry of the Solicitor General is responsible for OPP records.

ministry) under the *Freedom of Information and Protection of Privacy Act (FIPPA or the Act)* for access to information about her daughter's death.

[3] The ministry notified the deceased's surviving husband, the appellant in this appeal, of the request and sought his submissions on disclosure of the requested information.

[4] After consulting with the appellant, the ministry issued a decision granting the requester access to some of her daughter's personal information contained in responsive records. The ministry also granted access to some of the requester's own personal information in the records.²

[5] Regarding the daughter's personal information, the ministry determined that, although it is exempt under the discretionary personal privacy exemption in section 49(b) of the *Act*, disclosure of some of this information to her mother would not be an unjustified invasion of the deceased's personal privacy because it is desirable for compassionate reasons pursuant to section 21(4)(d). The requester did not appeal the ministry's decision to deny access to other information contained in the records.³

[6] The ministry informed the appellant of its decision by explaining that the information it decided to disclose includes "information about the deceased and details of the investigation into the cause of her death," but does not include personal information belonging to the appellant or others.

[7] The ministry informed the appellant in this letter that he could appeal the ministry's decision to grant the mother access to her daughter's personal information in the records to the Information and Privacy Commissioner of Ontario (IPC). The appellant appealed.

[8] The parties participated in mediation to explore the possibility of resolution. The appellant maintained that no information about the deceased should be disclosed to the requester and challenged the basis for any finding of compassionate reasons to support disclosure. The requester maintained that she wants access to the information that the ministry decided to disclose.

[9] When the appeal was not resolved in mediation, it was transferred to the adjudication stage of the appeal process, where an adjudicator may conduct a written inquiry.

[10] I conducted an inquiry during which I received representations from the appellant and the requester. After reviewing their representations and the ministry's decision and

² Access to the requester's own personal information in the records is not at issue in this appeal.

³ The ministry denied access to other information in the records pursuant to section 49(a) (right to refuse access to requester's own personal information), read with the law enforcement exemption in section 14(1)(l) (facilitate commission of an unlawful act or hamper the control of crime), and to personal information belonging to individuals other than the requester and her daughter, pursuant to the mandatory personal privacy exemption in section 21(1).

correspondence with the parties, I asked the ministry for representations relating to the appellant's status⁴ and his right to exercise the rights of the deceased under the *Act*.

[11] In this order, I uphold the ministry's decision to grant access to the information at issue pursuant to section 21(4)(d) of the *Act* and I dismiss the appeal.

RECORD:

[12] The record is a 186-page sudden death report. It consists of occurrence reports, witness statements, officers' notes, forensics and coroner's findings. At issue is access to portions of the record containing the deceased's personal information to which the ministry decided to grant access.⁵

[13] I have defined the record as a sudden death report based on the ministry's decision that it is exempt under section 49(b) because it contains the requester's personal information. Below, I also consider whether, if its component documents are viewed as individual records, the appropriate exemption over some of the records might be the mandatory personal privacy exemption in section 21(1).

[14] As also discussed below, this distinction is immaterial to my finding that the exception in section 21(4)(d) applies to the information at issue, because section 21(4)(d) applies to records that are exempt under either section 21(1) or section 49(b).

ISSUES:

- A. Can the appellant exercise the rights of the deceased under the *Act*?
- B. Does the record contain personal information as defined in section 2(1) of the *Act*, and if so, whose?
- C. Would disclosure of personal information constitute an unjustified invasion of personal privacy under section 21(1) or section 49(b)?

DISCUSSION:

Issue A: Can the appellant exercise the rights of the deceased under the *Act*?

[15] I turn first to the appellant's status in this appeal. As explained below, the appellant

⁴ As an affected party and/or personal representative, based on the ministry's correspondence (discussed under Issue A).

⁵ The ministry also located video recordings of interviews with witnesses, including the requester, and decided to disclose the recording of the requester's interview to her in full. As discussed in this order, access to the requester's own personal information is not at issue.

is not able to exercise the deceased's privacy rights under *FIPPA* to prevent the requester from obtaining access to her daughter's personal information under section 21(4)(d).

[16] The *Act* safeguards an individual's personal information even after death,⁶ with certain exceptions. When an individual makes a request for access to a deceased person's personal information, the institution (or the IPC on appeal) must balance the rights of various individuals, including possible "affected parties" or a deceased individual's "personal representative," if there is one.

[17] The *Act* distinguishes between affected parties and personal representatives. "Affected party" refers to an individual whose personal information is included in a responsive record or who may be impacted by its disclosure. An affected party's objections to disclosure are considered when balancing parties' interests to determine whether personal information is exempt under the *Act* because its disclosure would constitute an unjustified invasion of personal privacy. Where the compassionate reasons exception in section 21(4)(d) applies to the deceased's personal information, this means that disclosure of that information would *not* be an unjustified invasion of personal privacy, and, as discussed below, requires a shift in focus to the compassionate needs of the requester.

[18] A "personal representative," typically an estate trustee, is a person with legal authority to manage a deceased person's estate. Section 66(a) permits a personal representative to exercise any right or power conferred on an individual by the *Act* if exercise of the right or power relates to the administration of the individual's estate.⁷

[19] In this case, the appellant brings this appeal in his personal capacity, objecting to disclosure of his late wife's personal information to her mother. As noted above, the information at issue belongs to the deceased, and the ministry has decided to grant partial access to her mother for compassionate reasons. The appellant's personal information is not at issue, and he has not identified himself as the deceased's personal representative or provided evidence of being her estate trustee, including at the time he was consulted by the ministry. Even if he were, his ability to exercise his late wife's rights under *FIPPA* would be limited by section 66(a), which does not grant the personal representative broad authority over the deceased's privacy rights, except as needed for estate administration.

[20] In correspondence to the parties, the ministry referred to the appellant as both an affected party and as a personal representative whose views were sought explicitly regarding disclosure of the *deceased's* personal information. In its letter notifying the

⁶ Unless the individual has been dead for more than 30 years. See section 2(2), which provides that information about deceased individuals only ceases to be "personal information" after they have been dead for more than 30 years.

⁷ See section 66(a) and Order M-1075. By operation of section 66(a), a deceased person retains their right to personal privacy, except insofar as the administration of their estate is concerned.

appellant of the request under section 28,⁸ the ministry wrote:

In your capacity as the personal representative of the deceased, we would also appreciate receiving your views in regard to the disclosure of the information *regarding your late wife* contained in the records. [Emphasis in original]

[21] The ministry also referred to the appellant as the deceased's personal representative in its decision letter to the requester, stating that the ministry "undertook consultations with the personal representative of the deceased in order to comply with your request."

[22] Similarly, in its decision letter to the appellant, the ministry reiterated that, "In your capacity as the personal representative of the deceased, we sought your views in regard to disclosure of your late wife's information contained in the records."

[23] During the inquiry, the ministry clarified that it did not contact the appellant specifically because he was the deceased's personal representative, and that it did not rely on section 66(a) or any other provision of the *Act* in doing so. The ministry says it identified the appellant as the deceased's personal representative because he was her spouse, was identified in OPP records as her next of kin and lived with her. The ministry further explained that it consulted the appellant because the access request was made for compassionate reasons and that spouses and other close relatives may have differing views regarding the release of personal information for compassionate reasons under section 21(4)(d), so that consultation with the deceased's surviving spouse was essential to its decision.

[24] The *Act* does not give a spouse the right to prevent disclosure to a close relative where compassionate reasons for disclosure to the close relative are established.

[25] In these circumstances, it is useful to review the compassionate reasons exception. Former Commissioner Brian Beamish discussed the legislative history and purpose of the compassionate reasons exception in Order MO-2245, finding that spouses and close relatives are equal members of a special class of requesters.⁹ Order MO-2245 involved a mother's request for access to records of a police investigation into her son's death. The police in that case denied access to some information they deemed graphic, claiming that disclosure to the requester was tantamount to disclosure to the world, and that it would not help the requester with the grieving process. Commissioner Beamish found that the police's position that they had an obligation to protect information deemed sensitive

⁸ Where a request is made for a record that contains personal information whose disclosure the institution has reason to believe would constitute an unjustified invasion of personal privacy for the purposes of section 21(1)(f), section 28(1)(b) requires the institution to give written notice to the person to whom the information relates.

⁹ Order MO-2245, decided under the *Municipal Freedom of Information and Protection of Privacy Act*, refers to section 14(4)(c), which is the municipal equivalent of section 21(4)(d).

“misses the point” of the compassionate reasons exception. He found that:

With the enactment of this section, the Legislature has recognized a special group of requesters, namely the spouses and close relatives of deceased individuals.

[26] Commissioner Beamish also found that the police’s position that disclosure of graphic information would not reduce the mother’s suffering but would add more distress and sorrow was misguided. He found that “it does not rest with an institution to make decisions on behalf of [a grieving relative] as to whether disclosure is in *their* best interests,” and that institutions “have been directed to very specific criteria when considering disclosure to this group as compared to ‘disclosure to the world.’”

[27] Commissioner Beamish also disagreed with the police’s position that an institution takes on the role of having to act in a deceased’s best interests where a deceased cannot consent to the disclosure of their personal information, finding that:

Again, with respect, this approach is contrary to the clear intent of the Legislature in enacting section 14(1)(c) [the municipal equivalent of section 21(4)(d)]. Where section 14(4)(c) applies, consent (dealt with in section 14(1)(a))¹⁰ is irrelevant. 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...

[28] I agree with and adopt Commissioner Beamish’s finding that institutions have been directed to very specific criteria when considering disclosure to close relatives and find that that does not contemplate spousal or next of kin consultation as a pre-condition to applying the exception in section 21(4)(d). I further find that in this case, it is the deceased’s mother as the close relative seeking access who is best able to advocate in her own best interests for the kind of assistance she needs to help her grieve.

[29] As I have noted above, the *Act* expressly provides for consultation with affected

¹⁰ *FIPPA* section 21(1)(a).

parties when determining whether information is exempt if their personal information is involved or if disclosure may impact their privacy. Affected parties are not limited to a deceased's spouse and may include anyone whose personal interests or information are implicated by disclosure. The appellant may raise concerns if his own personal information is intertwined with his late wife's, which would be considered in determining whether disclosure constitutes an unjustified invasion of personal privacy for the purposes of section 21(1)(f).

[30] As an exception to the privacy protections in the *Act*, section 21(4)(d) permits disclosure of otherwise exempt personal information belonging to the deceased individual.

[31] Once this exception is raised, the primary consideration shifts to the requester's compassionate grounds, and the appellant's objections cannot prevent disclosure of the deceased individual's personal information if compassionate reasons for its disclosure to a close relative are established. I discuss this in more detail under Issue C, below. Briefly, however, in Order MO-2237, and followed in Order MO-2245, Former Commissioner Beamish found that a three-part test applies when considering the compassionate reasons exception. This test, also discussed under Issue C, does not consider the objections of affected parties, personal representatives or spouses, to disclosure of a deceased's personal information to a close relative where the close relative has established that there are compassionate reasons to do so.

[32] Accordingly, for the reasons outlined above, and later under Issue C, in this order I find that disclosure of the information at issue to the requester is desirable for compassionate reasons and that all the requirements of section 21(4)(d) have been satisfied based on the evidence and representations of the requester.

Issue B: Does the record contain "personal information" as defined in section 2(1), and, if so, whose?

[33] Before I can consider whether a personal privacy exemption applies to the information at issue, I must decide whether the records contain "personal information," and, if so, whose. Section 2(1) of the *Act* defines "personal information" as "recorded information about an identifiable individual."

[34] Information is "about" an individual when it refers to them in their personal capacity, which means that it reveals something of a personal nature about them. Information is about an "identifiable individual" if it is reasonable to expect that the individual can be identified from the information, either by itself or if combined with other information.¹¹ Section 2(1) of the *Act* gives a list of examples of personal information. The list is not exhaustive, meaning that other kinds of information may also be personal

¹¹ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002 O.J. No. 4300 (C.A.)].

information, even if not listed in section 2(1).¹²

Representations and findings

[35] Neither the appellant nor the requester addressed whether the record contains personal information. However, it is implicit from their representations that they believe that the information at issue is the deceased's personal information.

[36] To decide which sections of the *Act* may apply, the IPC determines whether a record contains personal information, and whose, on a "record by record" basis. This means that each record is examined as a whole, not just the information at issue.¹³

[37] If I consider the 186-page report as a single record, I find that it contains personal information belonging to the appellant, the requester, the requester's deceased daughter, and numerous other identifiable individuals. The record is primarily concerned with the requester's daughter's death. It consists of occurrence reports, forensic and post-mortem examination findings, and communications with individuals including the requester, and other witness statements.¹⁴ The witness statements contain witnesses' biographical data and contact information, and their views about the circumstances under investigation.¹⁵ The records identify these individuals by name. Their names, if disclosed, would reveal personal details about them, including details about their relationships with the deceased, the appellant and the requester, and their views about her death.¹⁶

[38] When the constituent documents are viewed as discrete records, I find that not all of them contain the requester's personal information. All of them, however, contain personal information belonging to the deceased, including information about her health, her family life and relationships, information about her before and around the time of her death, and findings about the cause of her death.¹⁷

[39] I will discuss this distinction more below when considering whether the information at issue, namely, the deceased's personal information, is exempt and if so, whether there are compassionate reasons for its disclosure pursuant to section 21(4)(d).

Issue C: Would disclosure of the personal information at issue constitute an unjustified invasion of personal privacy under section 21(1) or section 49(b)?

[40] As I have already noted, the personal information at issue – meaning the personal information that the ministry has decided to disclose to the requester – consists only of the deceased's personal information, either on its own or combined with the requester's

¹² Order 11.

¹³ Order M-352.

¹⁴ Paragraphs (a), (b), (c), (d), (e), (g) and (h) of the definition of "personal information" in section 2(1).

¹⁵ Paragraphs (a), (b) and (c) of the definition of "personal information" in section 2(1).

¹⁶ Paragraph (h) of the definition of "personal information" in section 2(1).

¹⁷ Paragraphs (e), (g) and (h) of the definition of "personal information" in section 2(1).

own personal information.

Section 21(1) and section 49(b)

[41] When a record contains personal information of another individual but not the requester, section 21(1) prohibits the institution from disclosing that personal information unless one of the exceptions in sections 21(1)(a) to (e) applies, or unless disclosure would not be an unjustified invasion of personal privacy under the exception in section 21(1)(f). None of the exceptions in sections 21(a) to (e) apply in this appeal.

[42] Under section 49(b), if a record contains the personal information of both the requester and another or other individuals, the institution may refuse to disclose the other individuals' personal information to the requester if disclosing that information would be an unjustified invasion of the other individuals' personal privacy.

[43] The ministry has denied access to the information at issue pursuant to section 49(b), suggesting that some or all of the record contains the mixed personal information of the requester and others. The section 49(b) exemption is discretionary. This means that an institution can decide to disclose another individual's personal information to a requester even if this would result in an unjustified invasion of the other individual's personal privacy.

[44] In applying either of the section 21(1) or 49(b) exemptions, sections 21(2) and (3) help in determining whether disclosure would or would not be an unjustified invasion of personal privacy. 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. Section 21(2) lists various factors that may be relevant in determining whether disclosure of the personal information would be an unjustified invasion of personal privacy under section 21(1). Where a presumption in section 21(3) applies to records that do not contain a requester's own personal information, then the factors in section 21(2) cannot displace the presumption and the records are exempt under section 21(1).

[45] For records that contain the requester's personal information that are claimed to be exempt under section 49(b), the applicable presumptions in section 21(3), factors in section 21(2), and the interests of the parties must be weighed and balanced in determining whether disclosure of the personal information at issue would be an unjustified invasion of personal privacy.¹⁸

[46] The ministry relies in its decision on the presumptions against disclosure in sections 21(3)(a) (medical history) and 21(3)(b) (investigation into possible violation of law); the factor against disclosure in section 21(2)(f) (highly sensitive); and finally, on the exception in section 21(4)(d), which states that disclosure to a "close relative" is not an unjustified invasion of personal privacy if it is desirable for compassionate reasons.

¹⁸ Order MO-2954.

Representations

[47] The requester acknowledges that she was estranged from her daughter. The requester provided additional context in her representations for her views regarding the estrangement, including details about family tensions. She says that the appellant did not notify her or her family that something had happened to her daughter and that, by the time the family learned through a third party, her daughter was in hospital on life support.

[48] The requester submits that there are many unresolved questions about her daughter's death and says she has a critical need to know the circumstances of her death to achieve closure. She says that "it is impossible to overstate the sadness and shock we have experienced," and that "we need to know what happened to our beloved daughter, sister and friend. Not knowing leaves us in limbo and unable to find closure."

[49] The ministry says consultation with the appellant was necessary to determine whether compassionate reasons for disclosure exist.

[50] The appellant opposes disclosure of any of the deceased's personal information or information about her death to the requester because, among other things, he says that the requester and her daughter were estranged and did not communicate. He submits that the deceased would object to the disclosure of any information about herself to the requester.

Analysis and findings

[51] I note at the outset that there is no challenge to the ministry's decision to disclose the requester's own personal information to her. The requester has not appealed the ministry's decision that some of the information in the records is exempt. Similarly, the appellant also does not challenge the ministry's decision that the discretionary personal privacy exemption in section 49(b) applies, including that:

- i. the presumption against disclosure in section 21(3)(a) applies to the information at issue (this section states that a disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation);
- ii. that the presumption against disclosure in section 21(3)(b) applies to the information at issue (this section states that a disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation); or that,
- iii. the factor in section 21(2)(f) applies to the information and weighs against its disclosure because the information in the records is highly sensitive.

[52] Balancing these presumptions, factors and the interests of the parties, the ministry decided that the records contain information that is exempt under section 49(b). Considering the record as a whole, namely, as a sudden death report, I have no basis to disturb the ministry's decision in this regard and I agree with it.

The exception in section 21(4)(d) applies to records exempt under sections 21(1) and 49(b)

[53] When viewed as a single, sudden death report, the record contains the requester's personal information together with the personal information of other individuals.

[54] If I were instead to consider its constituent components as discrete records, I would find that some of those records (the coroner's findings and forensics reports, and statements of witnesses other than the requester, for example) do not contain the requester's personal information.

[55] I accept the ministry's claim that the presumption in section 21(3)(b) applies to the records, and I find that this presumption is relevant to an exemption claim under either section 21(1) or 49(b). I find that this presumption applies because the records, whether considered as one sudden death report or as several discrete records assembled in a single report, were compiled and are identifiable as part of an investigation into a possible violation of law. In this case, the OPP investigated the death and could have laid charges.¹⁹

[56] While one presumption against disclosure is sufficient to meet the privacy protections contemplated in section 21(1), I find that, when viewed separately, some of the records would also be subject to the presumption in section 21(3)(a) because they contain information about the deceased's medical history.

[57] This means that, if viewed as individual records (rather than as a sudden death report), those records that do not contain the requester's personal information, would be exempt under section 21(1).

Are any circumstances in section 21(4) present?

[58] After finding that the information at issue is exempt under section 49(b), the ministry considered whether any circumstances in section 21(4) exist and decided that there are compassionate reasons to disclose the information at issue to the requester, pursuant to section 21(4)(d).

[59] My finding below that section 21(4)(d) applies in the circumstances is not altered by whether the sudden death report is considered as a single record and exempt under section 49(b), or whether its contents are viewed as individual records, with those

¹⁹ The fact that no charges were laid is immaterial since the presumption only requires that there be an investigation into a possible violation of law.

containing the requester's personal information exempt under section 49(b) and those not containing the requester's personal information exempt under section 21(1).

[60] This is because the exception in section 21(4)(d) applies to both the section 21(1) and 49(b) exemptions.

Section 21(4)(d): Is disclosure of the information at issue desirable for compassionate reasons?

[61] The final question for me to consider is whether disclosure of the deceased's personal information is desirable for compassionate reasons.

[62] Section 21(4)(d) of the *Act* states that:

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

(d) 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.

[63] Above, I considered the appellant's ability as the deceased's spouse to prevent disclosure of the deceased's personal information to the requester. Relying on Orders MO-2237 and MO-2245, I found that section 21(4)(d) creates a special class of requesters consisting of spouses and close relatives. I also found that, because of the narrowed rights in section 66(a), a personal representative cannot exercise the deceased's statutory privacy rights except insofar as they relate to the administration of the deceased's estate.

[64] As also noted earlier, in Orders MO-2237 and MO-2245, Commissioner Beamish found that there are three requirements for the compassionate reasons exception to apply: (1) do the records contain the personal information of a deceased individual? (2) is the requester a spouse or a "close relative" of the deceased individual? And (3) Is the disclosure of the deceased individual's personal information desirable for compassionate reasons, in the circumstances of the request?

[65] With respect to the first two questions, I have already found that the records contain the personal information of a deceased individual, and that the requester is the deceased's mother, which places her within the definition of "close relative" in section 2(1) of the *Act*.²⁰ Accordingly, the first two requirements for section 21(4)(d) to apply are met.

²⁰ The definition of "close relative" in section 2(1) of the *Act* includes an individual's biological or adoptive parent.

Part 3 – desirable for compassionate reasons

[66] The third question is whether disclosure to the requester is desirable for compassionate reasons pursuant to section 21(4)(d).

[67] Former Commissioner Brian Beamish considered the legislative history of the compassionate reasons exception in Order MO-2245. Referring to Order MO-2237, Commissioner Beamish came to the following conclusion regarding the application of the compassionate reasons exception:

...by using the words "in the circumstances" the Legislature intended that a broad and all encompassing approach be taken to the consideration by [the IPC] of whether or not disclosure is "desirable for compassionate reasons." In my view, by enacting this amendment to the *Act*, the Legislature intended to address an identified gap in the access to information legislation and increase the amount of information being provided to bereaved family members. ***It is recognized that, for surviving family members, greater knowledge of the circumstances of their loved one's death is by its very nature compassionate.*** [Emphasis in Order MO-2245]

[68] Applying this test, I find that the appellant's objection should be given no weight in the circumstances, including that, as explained above, the appellant does not have a statutory right under *FIPPA* to block disclosure of the deceased's personal information where the ministry has decided, or where a close relative seeking access has established, that disclosure is desirable for compassionate reasons under section 21(4)(d).

[69] Compassionate reasons have generally been found to exist where information will help a close relative with understanding the events leading up to and surrounding an individual's death.²¹ The basis for this exception is to help the relative cope with the death or gain a better understanding of the circumstances surrounding it.

[70] The requester submits that she seeks access to information surrounding the circumstances of her daughter's death and believes that the information at issue may shed light on her daughter's health before, and leading up to, her death. I accept the requester's representations that, as the deceased's mother, she wants to understand what happened to her daughter who died suddenly and under what were reported and investigated as suspicious circumstances.

[71] Commissioner Beamish also stated in Order MO-2237 that, in order to determine whether disclosure of a deceased individual's personal information is "desirable for compassionate reasons," the overall circumstances must be considered and weighed.

[72] In Order MO-2515, Adjudicator Laurel Cropley ordered the disclosure of records relating to police involvement with a deceased individual in the weeks before the

²¹ Order MO-2245.

individual's death. Adjudicator Cropley was satisfied that the records, which contained information about a deceased's health and physical state, shed some light on that person's circumstances shortly before their death. In reaching this conclusion, the adjudicator adopted the approach set out in Order MO-2237 and weighed factors relevant to the issue of whether disclosure was desirable for compassionate reasons.²²

[73] I also accept and follow this reasoning here.

[74] The requester's representations express sadness, confusion and concern over her estrangement with her daughter and her views of the underlying circumstances. I accept the requester's submission that disclosure of information about her daughter's death could provide her with some closure and with what she has described as much-needed understanding about the cause of her daughter's death. I find that the requester has demonstrated a need for closure and understanding that gives rise to compassionate reasons for disclosure, such that it would not be an unjustified invasion of the deceased's privacy.

[75] In my view, the requester's estrangement from her daughter does not diminish the requester's need for information. Rather, the separation and the inability to reconcile before her daughter's death are reasonably likely to exacerbate the requester's grief, frustrate her ability to find closure, or heighten her desire to understand what happened. Based on the requester's evidence and submissions, I find that granting the requester access to information about her daughter's death may offer her some solace, or some measure of understanding or closure, fulfilling the compassionate reasons upon which the ministry's decision is based and which section 21(4)(d) contemplates.

[76] For the reasons discussed above, I have not given the appellant's allegations about the requester any weight, and I am not persuaded that they displace the compassionate reasons the requester identified. In the circumstances, I find that the estrangement acknowledged by the requester bolsters her need for closure and the ministry's decision to grant access to some of her daughter's personal information for compassionate reasons.

[77] Finally, I note that the requester provided supporting documents with her representations which detail, among other things, steps she has taken to find answers about her daughter's death. I have not summarized those documents here because their contents are not relevant to this appeal, except to the extent that they underscore the requester's efforts to understand what happened to her daughter and her need for closure.

[78] For these reasons, I uphold the ministry's decision and find that disclosure to the requester would not constitute an unjustified invasion of the deceased's personal privacy by operation of section 21(4)(d), because the requester is a close relative of the

²² Order MO-2515 at pages 8 and 9.

deceased, and disclosure to her is desirable for compassionate reasons.

[79] Finally, given the ministry's decision to disclose certain information to the requester and to withhold other information, including information belonging to individuals other than the requester and the deceased, and their personal information where it is inextricably linked with other individuals' personal information, I am satisfied that the ministry properly exercised its discretion under section 49(b). There is no basis for me to conclude that the ministry took into account irrelevant considerations or that it acted in bad faith in exercising its discretion. Therefore, I uphold the ministry's exercise of discretion, and I dismiss this appeal.

ORDER:

I uphold the ministry's decision and dismiss this appeal.

Original Signed by: _____
Jessica Kowalski
Adjudicator

_____ October 29, 2024