

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4596

Appeal MA22-00249

Peel Regional Police Services Board

November 21, 2024

Summary: An individual made a request under the *Municipal Freedom of Information and Protection of Privacy Act* to the police for access to records relating to her sister's death. The police provided some information but decided not to provide the requester with a suicide note stating it was exempt under the personal privacy exemption in section 14(1) of the *Act*. The individual appealed stating that the deceased's parents needed the suicide note for closure in their grieving.

In this order, the adjudicator finds that though the individual provides compassionate reasons for requesting the suicide note, its disclosure is not desirable in this case as it would be an unjustified invasion of personal privacy of the deceased's spouse and other individuals. The adjudicator upholds the police's decision and dismisses the appeal.

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

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

OVERVIEW:

[1] This order considers the appellant's right of access to a family member's suicide note in light of the personal privacy exemption in section 14(1) of the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*).

[2] The appellant submitted a request under the *Act* to Peel Regional Police Services Board (the police) for access to records pertaining to her deceased sister (the deceased). The police located responsive records and granted the appellant partial access, withholding some information pursuant to sections 8(1)(l) (law enforcement) and 14(1) (personal privacy) of the *Act*.

[3] The appellant appealed the police's decision to the Information and Privacy Commissioner of Ontario (the IPC) to pursue access to one page of the withheld records, the deceased's suicide note (the note).

[4] A mediator was appointed to explore resolution and discussed the issues in the appeal with the parties. The mediator sought consent to disclose the note from the deceased's spouse (the affected party). Consent to release the note to the appellant was not obtained.

[5] The police maintained their position that the note is exempt under section 14(1) of the *Act*.

[6] As a mediated resolution was not achieved, the file was transferred to the adjudication stage of the appeal process for determination of the issue of the possible application of the personal privacy exemption in section 14(1) to the note.

[7] I decided to conduct an inquiry. I invited and received representations from the police and from the appellant. The police's representations were shared with the appellant in accordance with section 7 of the IPC *Code of Procedure*.

[8] I decided not to invite representations from the affected party. There is no information before me to suggest that the affected party's position has changed and consent for release of the note would be provided.

[9] For the reasons that follow, I find that disclosure of the note for compassionate reasons under section 14(4)(c) is not desirable in the circumstances of this appeal and it is exempt from disclosure under the mandatory personal privacy exemption in section 14(1) of the *Act*. I uphold the police's decision to withhold it and dismiss the appeal.

RECORDS:

[10] The record at issue is a one-page handwritten note.

ISSUES:

- A. Does the note contain "personal information" as defined in section 2(1) of the Act? If so, whose personal information is it?

- B. Does the mandatory personal privacy exemption in section 14(1) apply to the note?

DISCUSSION:

Issue A: Does the note contain “personal information” as defined in section 2(1) of the *Act* and, if so, whose personal information is it?

[11] The police have decided to withhold the note on the basis of the personal privacy exemption in section 14(1) of the *Act*.

[12] To decide which personal privacy exemption, if any, applies to the note, I must first determine whether it contains personal information and, if so, whose personal information.

[13] If the note contains the appellant’s own personal information, their access rights are greater than if it does not. Also, if the note contains the personal information of other individuals, one of the personal privacy exemptions might apply.

[14] Section 2(1) of the *Act* defines “personal information” as “recorded information about an identifiable individual.” 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 the individual. Information is about an “identifiable individual” if it is reasonable to expect that they can be identified from the information either by itself or combined with other information.¹

[15] Section 2(1) gives a list of examples of personal information. The list includes records of an individual’s personal opinions or views (paragraph (e)), the opinions or views of another individual about an individual (paragraph (g)) and an 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 (paragraph (h)).²

[16] The list of examples of personal information under section 2(1) is not a complete list. Other kinds of information can also be “personal information.”³

[17] The police’s position is that the note contains the deceased’s personal information. However, the police do not address whether the note contains the personal information of other identifiable individuals. The appellant’s representations do not address this issue.

[18] From my review of the note and without revealing its contents, I am satisfied that

¹ Order PO-1880, upheld on judicial review *in Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

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

³ See Order 11.

it contains the deceased's personal information and the personal information of other identifiable individuals, including the affected party and other members of the deceased's family. This information includes the deceased's views and opinions, the deceased's opinions or views about other identifiable individuals, and the names of the deceased and other identifiable individuals where it appears with other personal information relating to those individuals and where the disclosure of the name would reveal other personal information about those individuals. This information qualifies as personal information within the meaning of paragraphs (e), (g) and (h) of the definition in section 2(1). In respect of some of this information, I find that it also qualifies as the personal information of both the deceased and the other identifiable individuals.⁴

[19] I find that, in the note, the deceased's personal information is mixed with the personal information of other identifiable individuals in such a way that it is not reasonably practicable for it to be severed. In other words, the personal information in the note is inextricably intertwined.

[20] The appellant states that she is pursuing access to the note for reasons relating to her parents' grieving process. I have therefore considered whether the note contains their personal information. I find that the note does not contain personal information belonging to either the appellant or her parents.

[21] As I find that the note does not contain the appellant's personal information, I will consider whether the personal information of the deceased and other identifiable individuals is exempt from disclosure under the mandatory personal privacy exemption in section 14(1) of the *Act*.

Issue B: Does the mandatory exemption in section 14(1) apply to the note?

[22] One of the purposes of the *Act* is to protect the privacy of individuals with respect to personal information about themselves held by institutions. Section 14(1) of the *Act* creates a general rule that an institution cannot disclose personal information about another individual to a requester. This general rule is subject to several exceptions and limitations.

Exceptions to the general rule

[23] The section 14(1)(a) to (e) exceptions are relatively straightforward. If any of the five exceptions covered in sections 14(1)(a) to (e) exist, the institution must disclose the information. Neither party submits that any of the exceptions in section 14(1)(a) to (e) apply. From my review of the note and the circumstances of this appeal, I find that none of the exceptions in section 14(1)(a) to (e) apply.

[24] The section 14(1)(f) exception is more complicated. It requires the institution to

⁴ This finding is explained in more detail in my analysis of the application of section 14(4)(c) in Issue B below.

disclose another individual's personal information to a requester only if this would not be an "unjustified invasion of personal privacy." Sections 14(2), (3) and (4) help in deciding whether disclosure would or would not be an unjustified invasion of personal privacy.

[25] Sections 14(3)(a) to (h) should generally be considered first.⁵ These sections outline several situations in which disclosing personal information is presumed to be an unjustified invasion of personal privacy. If one of these presumptions applies, the personal information cannot be disclosed unless:

- there is a reason under section 14(4) that disclosure of the information would **not** be an "unjustified invasion of personal privacy," or
- there is a "compelling public interest" under section 16 that means the information should nonetheless be disclosed (the "public interest override").⁶

[26] If the personal information being requested does not fit within any of the presumptions under section 14(3), then the factors set out in section 14(2), if applicable, determine whether or not disclosure would be an unjustified invasion of personal privacy. If no factors favouring disclosure are present, the section 14(1) exemption – the general rule that personal information should not be disclosed – applies because the exception in section 14(1)(f) has not been established.⁷ However, if any of the situations in section 14(4) is present, then section 14(2) need not be considered as disclosure of the personal information is **not** an unjustified invasion of personal privacy, even if one of the section 14(3) presumptions exists.

[27] In their representations, the police address the considerations and factors that they submit are relevant to my determination of whether the personal privacy exemption in section 14(1) applies to the note. The police submit that the presumption against disclosure in section 14(3)(b) (information gathered as part of an investigation into a possible violation of law) is relevant.

[28] The appellant does not address any of the presumptions in section 14(3), nor the factors in section 14(2).

[29] I agree with the police that the only presumption in section 14(3) that may be relevant in the circumstances of this appeal is the presumption at section 14(3)(b). This presumption states that a disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information was compiled and is identifiable as part of an investigation into a possible violation of law.

[30] As a law enforcement agency, the police have responsibility for investigating

⁵ If any of the section 14(3) presumptions are found to apply, they cannot be rebutted by the factors in section 14(2) for the purposes of deciding whether the section 14(1) exemption has been established.

⁶ *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.).

⁷ Orders PO-2267 and PO-2733.

offences under the Criminal Code of Canada. From my review of the note and the circumstances of this appeal, I am satisfied that the note was seized by the police as part of a sudden death investigation. It is apparent from the records that at the close of their investigation, the police determined that no criminal offence had occurred.

[31] The presumption under section 14(3)(b) requires only that there be an investigation into *possible* violation of law.⁸ There is no requirement that criminal charges be laid.⁹

[32] Based on the information before me, I am satisfied that the police conducted an investigation into the deceased's death and that the note at issue in this appeal is identifiable as part of that investigation. Accordingly, I find that section 14(3)(b) applies to the note and its disclosure is presumed to be an unjustified invasion of personal privacy.

[33] As I find that the presumption in section 14(3)(b) applies, I will now consider whether section 14(4) or the public interest override in section 16 apply so that the note should be disclosed. Neither party has claimed the public interest override applies and it does not appear to me to be applicable in the circumstances of this appeal. I now turn to section 14(4).

Limitation in section 14(4)(c)

[34] Section 14(4) sets out limitations to the general rule in section 14(1) that an institution cannot disclose the personal information of another individual to a requester. If any of the paragraphs in section 14(4) apply, then the disclosure of the requested personal information is not an unjustified invasion of personal privacy within the meaning of section 14(1)(f).

[35] In this appeal, the circumstances listed in section 14(4)(c) are relevant to the disclosure of the personal information at issue in the note. No other circumstances listed in section 14(4) have been raised by the appellant and in my view, they are not present in this appeal.

[36] Section 14(4)(c) states, in part:

[A] disclosure does not constitute an unjustified invasion of personal privacy if it,

(c) discloses personal information about a deceased individual to the spouse or a close relative of the deceased individual, and the head is

⁸ Orders P-242 and MO-2235.

⁹ The presumption can also apply to records created as part of a law enforcement investigation where charges were laid but subsequently withdrawn (see Orders MO-2213, PO-1849 and PO-2608).

satisfied that, in the circumstances, the disclosure is desirable for compassionate reasons.

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

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

[38] For section 14(4)(c) to apply, the following conditions must be met:

1. The record must contain the personal information of someone who has died,
2. The requester must be a spouse or "close relative" of the deceased individual, and
3. The disclosure of the personal information of the deceased individual must be desirable for compassionate reasons given the circumstances of the request.¹⁰

[39] When considering whether section 14(4)(c) applies, an institution (when responding to a request) or the IPC (on appeal) must determine whether, "in the circumstances, disclosure is desirable for compassionate reasons," taking into account factors such as the need to assist the requester in the grieving process.¹¹ After the death of an individual, it is generally that person's spouse or close relatives who are in the best position to know if disclosure of particular kinds of personal information is in their "best interests."¹²

[40] A surviving spouse's objection to disclosure of the deceased individual's personal information is not a relevant factor to the application of section 14(4)(c). In Order MO-2245, former Commissioner Brian Beamish considered the legislative intent of the section and stated:

Where section 14(4)(c) applies, consent (dealt with in section 14(1)(a)) 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.

[41] As they do not take a position on the issue, the police do not make submissions about the existence of compassionate reasons making disclosure desirable in this appeal. However, the police have provided me with several examples of orders in which the IPC

¹⁰ Orders MO-2237 and MO-2245.

¹¹ Order MO-2245.

¹² Order MO-2245.

has considered section 14(4)(c).¹³

[42] The appellant does not specifically address the three conditions for the application of section 14(4)(c) but explains in her representations why disclosure of the note is necessary for hers and her parents' grieving processes.

Conditions one and two: personal information of the deceased and "close relative"

[43] I am satisfied that the first two conditions for section 14(4)(c) to apply are met: the note contains the personal information of a deceased individual and the appellant, the deceased's sister, is a "close relative" within the meaning of the *Act*. Accordingly, conditions one and two are met.

Condition three: disclosure is desirable for compassionate reasons in the circumstances

[44] I have carefully considered the circumstances of this appeal, the contents of the note and the appellant's reasons for seeking its disclosure. I accept that the appellant has demonstrated that there are compassionate reasons that support disclosure of the deceased's suicide note to their surviving family members. However, as I explain below, I am not persuaded that, in the circumstances of this appeal, disclosure is desirable.

[45] The police cite Order MO-2237, in which the adjudicator considered the approach to be taken in cases where the personal information of the deceased also qualifies as the personal information of other individuals, within the meaning of the definition in section 2(1) of the *Act*. After reviewing the history that led to the *Act's* amendment to enable relatives of deceased individuals to obtain access to their personal information, the adjudicator stated:

[I]n my view, it is consistent with both the definition of "personal information" in section 2(1) and the legislative purpose behind this section to interpret "personal information about a deceased individual" as including not only personal information solely relating to the deceased, but another individual or individuals as well.

The conclusion that personal information about a deceased individual can include information about other individuals, raises the further question of how the information of those other individuals should be assessed in deciding what to disclose under section 14(4)(c). In my view, assistance is provided in that regard by the legislative text, which permits disclosure that is "in the circumstances, desirable for compassionate reasons."

Where this is the case, the "circumstances" to be considered would, in my view, include the fact that the personal information of the deceased is also

¹³ The police cite Orders MO-2237, MO-2245, MO-3753, MO-3260, MO-2800, MO-2907 and MO-3666-I as examples.

the personal information of another individual or individuals. The factors and circumstances referred to in section 14(2) may provide assistance in this regard, but the overall circumstances must be considered and weighed in any application of section 14(4)(c).

[46] I agree with this approach and adopt it in this appeal. I have considered the overall circumstances of this case and, in particular, that some of the deceased's personal information in the note also qualifies as the personal information of the affected party and other identifiable individuals. In addition, I have considered that this personal information is inextricably intertwined so that the personal information of the deceased alone cannot reasonably practicably be severed from the note.

[47] The parties have not raised any of the factors in section 14(2). In my view, the factor in section 14(2)(f) is of assistance in this case. Section 14(2)(f) applies and weighs against disclosure if the information at issue is "highly sensitive." To be considered "highly sensitive", there must be a reasonable expectation of significant personal distress if the information is disclosed.¹⁴

[48] I have considered the nature of the record at issue: a handwritten suicide note. The note includes an addressee. I find that the note is intimate in its nature. In my view, there is a reasonable expectation that disclosure of the note to an individual or individuals other than the addressee would cause significant personal distress to the addressee. Accordingly, I find that the factor in section 14(2)(f) is a factor weighing against disclosure being desirable in the circumstances of this appeal.

[49] As I have noted, once section 14(4)(c) is raised, an affected party's objections cannot prevent the disclosure of the *deceased* individual's personal information.¹⁵ However, in my view an affected party's objections are a factor weighing against disclosure when the information at issue includes their personal information. In these circumstances, which are present in this appeal, I find the affected party's objection is a factor weighing against disclosure being desirable for compassionate reasons.

[50] One of the *Act's* purposes is the protection of personal privacy.¹⁶ With this purpose in mind, I find that the privacy interests of the affected party who objects to disclosure and the other individuals whose personal information is at issue, outweigh the appellant's interests in seeking access to the note. Notwithstanding the compassionate reasons the appellant has provided for accessing her sister's suicide note, I am not satisfied that its disclosure is desirable in all the circumstances.

[51] Accordingly, I find that the third part of the test for the application of section 14(4)(c) is not met and disclosure of the note for compassionate reasons is not desirable

¹⁴ Orders PO-2518, PO-2517, MO-2262 and MO-2344.

¹⁵ See PO-4563.

¹⁶ Section 1(b).

in these circumstances.

[52] In summary, I find that the presumption against disclosure in section 14(3)(b) applies to the note and neither section 14(4) nor section 16 apply so that it should nonetheless be disclosed. For all these reasons, I find that the disclosure of the note would constitute an unjustified invasion of personal privacy of identifiable individuals, and it is exempt under the mandatory personal privacy exemption in section 14(1).

ORDER:

I uphold the police's decision not to disclose the record and dismiss the appeal.

Original Signed by: _____
Katherine Ball
Adjudicator

November 21, 2024 _____