

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4610

Appeal MA21-00608

Halton Regional Police Services Board

December 30, 2024

Summary: The police received a request from the appellant for access to information about his father's death. The police granted partial access to responsive records. Two affected parties, individuals who lived with the deceased at the time of his death, opposed disclosure of their personal information in the records, including where it is inextricably mixed with the deceased's personal information. The adjudicator finds that the information at issue is exempt under the personal privacy exemptions in sections 14(1) and 38(b) of the *Act*.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2(1) (definition of "personal information"), 14(1), 14(2)(d), 14(3)(b), 38(b), and 54(a).

Order Considered: Order MO-2237.

OVERVIEW:

[1] The appellant made a request to the Halton Regional Police Service (the police) for access under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to information relating to his father's death. Specifically, the appellant sought access to "all information relating to the occurrence on [a specific date] in connection with my deceased father." The appellant later clarified his request to be for access to reports, notebook entries, witness statements, photos, audio, and video recordings.

[2] The police issued a decision granting partial access to responsive records.¹ In their decision, the police wrote that they denied access to some portions of the records based on the discretionary exemption in section 38(a) (right to refuse requester's own information), read with certain discretionary law enforcement exemptions,² and others based on the personal privacy exemption in section 38(b).³

[3] The police disclosed the appellant's personal information to him and disclosed some personal information belonging to his deceased father, but denied access to personal information belonging to individuals whose interests might be affected by disclosure (affected parties), including where that information is mixed with the appellant's father's personal information. The police also wrote that, in granting partial access, they considered the exception in section 14(4)(c), which contemplates disclosure for compassionate reasons, and ultimately disclosed more of the appellant's father's personal information to the appellant, consisting of information about his father's health, prescriptions, and his family doctor.⁴

[4] The appellant appealed the police's decision to the Information and Privacy Commissioner of Ontario (IPC). The parties participated in mediation, during which the mediator sought affected parties' consent to disclosure of their personal information. Two affected parties denied consent to disclosure of any information relating to them contained in the records.⁵

[5] The appellant confirmed during mediation that he does not seek access to "ten codes, patrol zone information and statistical codes" withheld by the police, or information withheld as non-responsive to the request. As a result, access to non-responsive information and information claimed exempt under the discretionary law enforcement exemptions was removed as an issue in this appeal.

[6] When the remaining issues were not resolved in mediation, the appeal was transferred to the adjudication stage of the appeal process. I conducted an inquiry, during which I received representations from the appellant, the police and the two affected parties (other family members of the deceased) who denied consent to disclosure of their personal information in the records.

[7] In this order, I find that the information that is at issue is personal information belonging to the deceased, and to the two affected parties. I find that the withheld personal information belonging to the deceased is intermingled with the affected parties'

¹ The police submit that they advised the appellant that no photographs, video recordings or formal statements were taken.

² Specifically, section 49(a) read with sections 8(1)(e) (endanger life or safety) and 8(1)(l) (facilitate commission of an unlawful act).

³ With reference to the presumption in section 14(3)(b) (investigation into possible violation of law).

⁴ The police disclosed this additional information during mediation.

⁵ Some affected parties consented to disclosure of their information in the records. This order deals with access to the personal information belonging to the two affected parties who did not consent, including where their personal information is mixed with the deceased's personal information.

personal information in a way that cannot reasonably be severed. Where this information appears in records that do not contain the appellant's personal information, I find that it is exempt under the mandatory personal privacy exemption in section 14(1). Where the information at issue appears in a record containing the appellant's personal information, I find that it is exempt under the discretionary personal privacy exemption in section 38(b). Finally, I find that the exception in section 14(4)(c) does not apply because disclosure of the information at issue belonging to the deceased and the affected parties is not desirable for compassionate reasons in the circumstances . I uphold the police's decision and dismiss the appeal.

RECORDS:

[8] There are three records at issue, consisting of an audio recording of a 911 call (record 1), a four-page occurrence report (record 2), and officers' handwritten memorandum book notes (record 3).

[9] Although not numbered by the police, I have numbered the records (as indicated in parentheses) for ease of reference in this order. At issue is access to record 1 in its entirety, and to the information withheld from records 2 and 3.

ISSUES:

- A. Do the records contain personal information as defined in section 2(1) of the *Act*, and if so, whose?
- B. Does either the mandatory personal privacy exemption at section 14(1) or the discretionary personal privacy exemption at section 38(b) apply to the records?

DISCUSSION:

Issue A: Do the records contain "personal information" as defined in section 2(1), and, if so, whose?

[10] Before I can consider if a personal privacy exemption applies to the information at issue, I must determine 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."

[11] 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.⁶

[12] Section 2(1) gives a list of examples of personal information. This list includes records relating to an individual's age, sex, colour and family status (paragraph (a) of section 2(1)); information relating to medical, psychiatric or psychological, criminal or employment history (paragraph (b)); identifying numbers or other particulars assigned to an individual (paragraph (c)); an address or telephone number (paragraph (d)); the opinions or views of another individual about an individual (paragraph (g)); and an individual's name where disclosure of the name would reveal other personal information about the individual (paragraph (h)).⁷

[13] This list is not exhaustive, meaning that other kinds of information may also be personal information, even if not listed in section 2(1).⁸

Representations

[14] The police submit that the records contain personal information about the appellant's deceased father and other identifiable individuals, such as details regarding their age, sex, medical history, address, telephone number, driver's license information, statements and/or opinions, and, in the case of the 911 call, the caller's voice. The police also submit that the records contain a "minimal" amount of the appellant's personal information, with the "vast majority" pertaining to others (the affected parties). They say that the records include the affected parties' statements and opinions about themselves and others, including the deceased, and that redacting "personal identifiers" would not effectively anonymize the information, given the appellant's familiarity with the circumstances of his father's death.

[15] The appellant submits that, although the records contain his and affected parties' personal information, most of the information in the records relates to his deceased father.

[16] The affected parties submit that the records contain their personal information mixed with the appellant's father's personal information.

Analysis and findings

[17] Previous IPC orders have established that, to determine if a record contains a requester's personal information, the entire record must be reviewed, not just the portions remaining at issue.⁹ This record-by-record approach is significant because it determines whether the record as a whole (rather than specific portions) is assessed

⁶ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002 O.J. No. 4300 (C.A.)].

⁷ Paragraphs (a), (b), (c), (d), (e) and (h) of the definition of "personal information" in section 2(1).

⁸ Order 11.

⁹ See, for example, Order PO-3129.

under Part I or Part II of the *Act*.¹⁰ Some exemptions are mandatory under Part I, while others are discretionary under Part II.

[18] If a record contains both the requester's and another person's personal information, the request is considered under Part II of the *Act*, and is subject to the discretionary personal privacy exemption in section 38(b).¹¹ If the record does not contain the requester's personal information, it is considered under Part I, and the relevant personal privacy exemption is the mandatory exemption in section 14(1).

[19] Upon reviewing the records, I find that all three records contain personal information belonging to the deceased and the affected parties, but that only record 3 (the officers' notes) contains the appellant's personal information.

Records 1 and 2 (the 911 call recording and the occurrence report)

[20] Record 1 (the 911 call) does not contain the appellant's personal information. It contains personal information solely about an affected party and the deceased, including the affected party's voice and their description of the circumstances that prompted the call. The affected party's voice is considered their personal information because it renders them identifiable. Disclosure of this record would reveal details about both the affected party and the deceased and link them to a specific event reported to the police. I therefore find that the audio recording constitutes "recorded information about an identifiable individual" as defined in the introductory wording of the definition of personal information in section 2(1).

[21] Similarly, record 2 (the occurrence report) contains personal information belonging to the deceased and the affected parties but not the appellant. This includes details of the circumstances about the deceased's death, his health and medications, and statements from the affected parties about themselves and their relationships with the deceased. These statements, views, and opinions, qualify as personal information under paragraphs (e), (g) and (h) of section 2(1). The report also contains biographical and contact details of the deceased and the affected parties, which I find is their personal information as defined in paragraphs (a) and (d) of section 2(1).

Record 3 (officers' notes)

[22] Record 3 contains the appellant's name, address, and telephone number, and identifies him as the deceased's son. I find that this is the appellant's personal information under paragraphs (a), (d) and (h) of section 2(1).¹²

[23] Record 3 also contains personal information belonging to the deceased and the affected parties that I find is their personal information under paragraphs (a), (d) and (h)

¹⁰ Order M-352. Discussed in greater detail at Issue B in this order.

¹¹ Order M-352.

¹² This information was disclosed to the appellant.

of section 2(1), because it includes identifying information, their views and opinions, and their names which, if disclosed would reveal something of a personal nature about them.

[24] Finally, I find that the deceased's personal information at issue also qualifies as the affected parties' personal information as defined in paragraphs (e) and (g) of section 2(1) where it includes the affected parties' views and opinions. I find that this information is personal information that is inextricably mixed, such that severing the deceased's personal information would be impracticable and would result in disclosure of meaningless "snippets" or disconnected fragments of information.¹³

Issue B: Does either the mandatory personal privacy exemption at section 14(1) or the discretionary personal privacy exemption at section 38(b) apply to the records?

[25] While the police claimed section 38(b) over all three records,¹⁴ I have found that records 1 and 2 (the 911 call and occurrence report) do not contain the appellant's personal information and should not be assessed under this section. I will therefore consider whether records 1 and 2 are exempt under the mandatory personal privacy exemption in section 14(1). I will consider whether record 3 (the officers' notes) is exempt under the discretionary exemption in section 38(b) because it contains personal information of the appellant as well as the deceased and the affected parties.

[26] Under section 38(b), where a record contains personal information of both the requester (the appellant in this case) and another individual, and disclosure of the information would be an "unjustified invasion" of the other individual's personal privacy, the police may refuse to disclose that information to the appellant. Since the section 38(b) exemption is discretionary, the police may also decide to disclose the information to the appellant.

[27] In contrast, under section 14(1), when a record contains personal information of another individual, including a deceased individual, but not the requester, the police are prohibited from disclosing that information unless one of the exceptions in sections 14(1)(a) to (e) applies, or unless disclosure would not be an unjustified invasion of personal privacy under section 14(1)(f).

[28] In applying either section 14(1) or 38(b), sections 14(2) and (3) help to determine whether disclosure would or would not be an unjustified invasion of personal privacy. Section 14(2) lists factors for the police to consider in making this determination. Section

¹³ See, for example, Order PO-3809, which held that severance must be reasonable, and that an institution will not be required to sever a record where to do so would reveal only disconnected snippets, or worthless and meaningless information. See also *Ontario (Minister of Finance) v Ontario (Information and Privacy Commissioner)* (1997), 102 O.A.C. 72 (Div. Ct.).

¹⁴ During the inquiry, I asked the parties to consider whose personal information was contained in the records and whether section 14(1) could apply to any of them. The police maintained their decision that the records are exempt under section 38(b).

14(3), meanwhile, lists types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy. Section 14(4) sets out certain exceptions where disclosure of personal information is not an unjustified invasion of personal privacy.

[29] If any of the presumptions in section 14(3) applies to records that do not contain the appellant's own personal information, then the factors in section 14(2) cannot be used to rebut the presumption and the records are exempt under section 14(1).

[30] For records that contain the appellant's personal information that are claimed to be exempt under section 38(b), any applicable presumptions in section 14(3), factors in section 14(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.¹⁵

Representations

The police's representations

[31] The police maintain that section 38(b) applies to "the records." They say that they granted the appellant access to his own personal information and to his father's personal information standing alone. They say that the appellant's personal information in the records is "minimal," but they do not specify which records contain this information, nor do they clarify whether any records do not.

[32] The police say that the withheld personal information at issue belongs to the affected parties and to the deceased; that the deceased's remaining personal information is intertwined with the affected parties' personal information; and that the affected parties have not consented to disclosure of any of their personal information.

[33] The police rely on two presumptions against disclosure in section 14(3). First, they raise the presumption in section 14(3)(a), pertaining to medical history, because they say that the records contain information about the deceased's health.¹⁶ Second, they rely on the presumption in section 14(3)(b), stating that the records were compiled during an investigation which, though ultimately determined to involve a natural death, could have led to criminal charges. The police also say the factor in section 14(2)(f) applies to weigh against disclosure because the information in the records is highly sensitive.

[34] They say that, in exercising their discretion under section 38(b), they sought to protect the personal privacy of affected individuals and acted in the parties' best interests. The police do not address the mandatory personal privacy exemption in section 14(1), although asked during the inquiry to consider it.

¹⁵ Order MO-2954.

¹⁶ The police disclosed portions of the records that contain the deceased's health information for compassionate reasons, as contemplated by section 14(4)(c).

The appellant's representations

[35] The appellant submits that his father's estate trustee (who is not the appellant) "consents to release of all of the information requested by the Appellant,"¹⁷ so that disclosure is not an unjustified invasion of personal privacy under section 14(1)(a).

[36] The appellant says that the presumption in section 14(3)(b) does not apply. He submits that it would be an unreasonable interpretation to assume that every police investigation into a death to rule out foul play automatically justifies a blanket refusal to disclose information.

[37] The appellant submits that administering the estate includes gathering his father's assets and handling estate-related claims. He says that the estate has commenced litigation against one of the affected parties who, in turn, has brought a counterclaim against it. He argues that disclosure of "all" the requested information – which I understand to include the affected parties' personal information – is required "to prove the course of conduct between the deceased and [the affected party] which assists in the estate's claim," and therefore relates to identification and distribution of estate assets, and to the litigation over assets. He provided a copy of the pleadings with his representations. He contends that the police improperly exercised their discretion under section 38(b) by considering whether the records could be "used against" affected parties and says that this demonstrates that the primary motive for withholding the information was to prevent its use.

[38] The appellant also argues that it is unlikely that the 911 call and subsequent police notes contain anything beyond standard information typically recorded when someone dies of natural causes and says that it would be absurd to refuse disclosure in this case, given that the affected party who found the deceased has already shared many the details regarding the discovery of the appellant's father's body the call's contents.

The affected parties' representations

[39] The affected parties argue that the disclosure of their personal information would constitute an unjustified invasion of their personal privacy. They say that the presumption in section 14(3)(b) applies to their personal information because the information was collected during a police investigation into a possible violation of law.

Analysis and findings

[40] The parties raise two exceptions in this appeal: sections 14(1)(a) (consent) and 14(1)(f) (unjustified invasion of personal privacy).

¹⁷ This consent was provided via the estate's lawyer, who is also the appellant's counsel in this appeal. The appellant's representations do not specify whether "all the information" refers to only the deceased's personal information, or the affected parties' personal information too.

Section 14(1)(a): consent to disclosure

[41] I find that the exception in section 14(1)(a), on which the appellant relies, does not apply in the circumstances.

[42] Section 14(1)(a) permits an institution to disclose personal information to any person other than the individual to whom the information relates "upon the prior written consent of the individual, if the record is one to which the individual is entitled to have access."

[43] I have found above that the information at issue belongs to the affected parties and to the deceased, and, where it includes both their personal information, is intertwined in a way that is impracticable to sever. As I have also noted above, the appellant takes the position that his father's estate trustee consents to disclosure of "all" of the information, which I understand to include the affected parties' personal information, including where it is mixed with the deceased's.

[44] The *Act* safeguards an individual's personal information even after death,¹⁸ with certain exceptions. The *Act* does not give an estate trustee broad authority over a deceased's privacy rights and limits an estate trustee's powers to estate administration. Under section 54(a), an estate trustee may exercise any right or power conferred on an individual by the *Act* only "if exercise of the right or power relates to the administration of the individual's estate."

[45] Based on my review of the records and the parties' representations, I am not persuaded that the personal information remaining at issue, which largely consists of the affected parties' personal information intermingled with the deceased's, is necessary for the purposes of estate administration. Even if I were to find that it is, under section 14(1)(a), any consent provided by the estate trustee is limited to the deceased's personal information that may be necessary for estate administration. The estate trustee's consent cannot extend to the personal information of living individuals who have explicitly denied consent to disclosure of their personal information, including where it is inextricably intermingled with the deceased's personal information. Just as the deceased could not have consented to disclosure of the affected parties' personal information during his lifetime, the estate trustee likewise cannot authorize such disclosure after the deceased's death.

[46] I will revisit the appellant's arguments about the relevance of the information to litigation later, when I consider whether there are any factors weighing in favour or against disclosure.

¹⁸ 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.

Section 14(1)(f): is disclosure an unjustified invasion of personal privacy?

[47] Section 14(1)(f) permits disclosure where it would not be an unjustified invasion of personal privacy. If any of sections 14(3)(a) to (h) apply, disclosure of the information is presumed to constitute an unjustified invasion of personal privacy.

[48] In this case, both the police and the affected parties rely on the presumption in section 14(3)(b) to argue that disclosure is presumed to be an unjustified invasion of personal privacy.

[49] I find that the presumption in section 14(3)(b) applies to all three records. It states that:

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

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

[50] Based on the records and the parties' representations, I am satisfied that the personal information in the records was compiled and is identifiable as part of an investigation into a possible violation of law. Responding to a 911 call regarding the apparent death of an adult individual, the police initiated an investigation into the circumstances. The fact that no charges were laid is immaterial to my finding, since the presumption only requires that there be an investigation into a possible violation of law.¹⁹ The focus of the presumption is not on the ultimate outcome of the investigation, but on its nature and purpose.

[51] Based on the materials before me, the absence of criminal or unlawful activity does not negate the investigative process that occurred in the circumstances to ensure no violations of law occurred. I therefore find that the presumption in section 14(3)(b) applies to all three records.

Records 1 and 2 are exempt under section 14(1)

[52] In the case of records 1 and 2 that do not contain the appellant's personal information, because the presumption against disclosure in section 14(3)(b) applies and cannot be rebutted by any factors listed in section 14(2) that might weigh in favour of disclosure, disclosure of the deceased's and affected parties' personal information contained in them is presumed to constitute an unjustified invasion of personal privacy. Consequently, I find that records 1 and 2 are exempt under section 14(1).

¹⁹ Orders P-242 and MO-2235.

Record 3 and section 38(b)

[53] For record 3 – which must be examined under section 38(b) because it contains the appellant’s personal information (in the form of his name, date of birth, and contact information) – I must also consider whether any factors in section 14(2)²⁰ apply and weigh them against the presumption in section 14(3)(b).

[54] Section 14(2) contains a non-exhaustive list of factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy under section 38(b).²¹ Some, if they apply, weigh in favour or disclosure, while others favour non-disclosure.

[55] The parties’ representations raise the possible application of the factors in section 14(2)(d) (fair determination of rights) and 14(2)(f) (highly sensitive). If they apply, the first weighs in favour of disclosure, while the latter weighs against it.

Section 14(2)(d): fair determination of rights

[56] Section 14(2)(d) requires an institution, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, to consider whether “the personal information is relevant to a fair determination of rights affecting the person who made the request.”

[57] The appellant argues that disclosure is required to assist the estate with litigation involving identification and securing of estate assets. Although not explicitly cited, this is the only factor in the circumstances described by the appellant that could weigh in favour of disclosure if it were found to apply.

[58] The IPC has found that for section 14(2)(d) to apply, all four parts of a four-part test must be established: that the right in question is a legal right; that it is related to a proceeding that has not already been completed but that is either existing or contemplated; that the information has some bearing or is significant to the determination of the right in question; and that it is required to prepare for the proceeding or to ensure an impartial hearing.

[59] The appellant has not explained how the information withheld from record 3 (the officers’ notes) is related or significant to the litigation involving the estate, and, by extension to the estate’s administration, or is required to ensure an impartial hearing. The appellant has not shown that non-disclosure is an impediment to commencing litigation; in fact, it is clear that litigation is underway. Similarly, the appellant has not explained how disclosure is necessary to prepare for the proceeding or ensure an impartial hearing²² where litigation provides for mechanisms for the discovery and

²⁰ As well any relevant unlisted factors. No unlisted factors have been raised in this appeal.

²¹ Order P-239.

²² Or records 1 and 2 that I have found to be exempt under section 14(1), for that matter.

production of information that is relevant to the litigation. In the circumstances, I find that all four parts of the four-part test for section 14(2)(d) are not met and that this factor does not apply to weigh in favour of disclosure of the information at issue.

Section 14(2)(f): highly sensitive

[60] The police also raised the factor in section 14(2)(f), which, if it applies, protects information that is highly sensitive.²³

[61] Because I have found that no factors favouring disclosure apply, I do not need to consider whether any factors that favour privacy protection (or non-disclosure) apply, including the factor in section 14(2)(f).

Conclusion

[62] For records 1 and 2 (the 911 call and occurrence report), which do not contain the appellant's personal information, I have found that disclosure is presumed to constitute an unjustified invasion of personal privacy by operation of the presumption in section 14(3)(b), and that these records are exempt under the mandatory personal privacy exemption in section 14(1).

[63] For record 3 (the officers' notes), which contains the appellant's personal information, I have found the presumption in section 14(3)(b) applies and weighs against disclosure of the information at issue, and that there are no factors present that weigh in favour of disclosure. I therefore find that record 3 is exempt under the discretionary personal privacy exemption in section 38(b).

[64] These findings are subject to my discussion of the exception in section 14(4)(c), which contemplates disclosure for compassionate reasons. This exception may apply to information that is exempt under either section 14(1) or 38(b).

[65] Before addressing the exception in section 14(4)(c), however, I will consider the police's exercise of discretion under section 38(b), followed by the appellant's argument that it would be absurd not to disclose information at issue to him.

The police's exercise of discretion under section 38(b)

[66] The appellant argues that the police exercised their discretion improperly and says that the police's representations suggest they denied access to the information at issue to prevent its use in litigation.

[67] I find no basis to conclude that the police exercised their discretion improperly or sought to undermine the estate's position in litigation. I am satisfied that the police

²³ To be considered highly sensitive, there must be a reasonable expectation of significant personal distress if the personal information is disclosed.

considered the nature of the information at issue and the circumstances under which it was collected. I find that the police's representations demonstrate that the police considered the need to safeguard the affected parties' statements and balanced that need against the appellant's right to access to his own personal information (in record 3 and which was disclosed) and the personal information of his deceased father. In giving effect to the latter, I am satisfied that the police disclosed a significant portion of the records containing the appellant's father's personal information. I am also satisfied that the police disclosed additional information for compassionate reasons. In these circumstances, I find that the police attempted to give the appellant broad access while protecting information relating to affected parties who explicitly asked that their personal information be kept confidential. I find that the police did not err in their exercise of discretion to withhold the affected parties' personal information, including where it is intermingled with the deceased's. Accordingly, I find that the police exercised their discretion in an appropriate manner to withhold personal information that I have found to be exempt under section 38(b), and I uphold their exercise of discretion as reasonable.

Absurd result

[68] The appellant argues that it would be absurd to deny access, particularly to the 911 call, as the affected party who made the call already shared most of the details with him.

[69] Past IPC orders have held that denying a requester access to information that they are otherwise aware of could lead to an absurd result. This principle has been applied where, for example, a requester was present when the information was provided to the institution,²⁴ or where the information is clearly within the requester's knowledge.²⁵

[70] The records already disclosed to the appellant reveal information about the circumstances of his father's death. While the appellant may have information about how his father was found, either from previously disclosed records or from an affected party, there is no evidence that he already knows the contents of the information at issue. Additionally, record 3 supports the police's submission that an affected party provided the appellant's personal information to the police in absence of the appellant. In these circumstances, I find that the absurd result principle does not apply.

[71] The final question for me to consider is whether disclosure of the deceased's personal information is desirable for compassionate reasons under the exception in section 14(4)(c), which applies to information found to be exempt under both sections 14(1) and 38(b).

²⁴ Orders M-444 and P-1414.

²⁵ Orders MO-1106, PO-1679, and MO-1755.

Section 14(4)(c): Is disclosure of the information at issue desirable for compassionate reasons.

[72] Section 14(4)(c) creates an exception to the general rule that an institution cannot disclose another person's personal information to a requester. If section 14(4)(c) applies, then the disclosure of the requested personal information is not an unjustified invasion of personal privacy within the meaning of section 14(1)(f).

[73] After finding the information at issue to be exempt, the police considered whether any circumstances in section 14(4) exist and decided that there were compassionate reasons to disclose more of his father's personal information to the appellant under section 14(4)(c).

[74] Section 14(4)(c) states that:

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

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

[75] When considering whether section 14(4)(c) applies, an institution (or the IPC on appeal) must determine whether, "in the circumstances, disclosure is desirable for compassionate reasons," by taking into account factors such as the need to assist the requester in the grieving process.²⁶

Representations

[76] The appellant submits that the criteria for the application of the compassionate reasons exception in section 14(4)(c) are met because:

- the records contain personal information about the deceased;
- the appellant is the deceased's son and should not be kept in the dark about how his father was found, which would bring him closure;
- it is not the police's role to dictate what information the appellant needs to grieve or achieve closure; and,
- the estate trustee consents to the disclosure.

[77] The police submit that section 14(4)(c) "cannot be applied to all records; it [can] only be applied to the personal information of the Deceased" and that the affected parties

²⁶ Order MO-2245.

"are still entitled to their privacy." They submit that the withheld portions of the occurrence report and officers' notes do not contain information that would assist the appellant in coping with his father's death.

[78] The affected parties submit that the police already appropriately addressed compassionate reasons for disclosure by granting access to severed copies of the records. They say that this disclosure, together with an unredacted coroner's report, provided the appellant with details about his father's death without creating an unjustified invasion of the affected parties' personal privacy.

Analysis and findings

[79] Prior IPC orders have established that three questions must be answered affirmatively 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?²⁷

[80] I find that the requirements in the first two questions are met. Above I have found that the records contain the deceased's personal information, and there is no dispute that the appellant is the deceased's son, which places him within the definition of "close relative" in section 2(1) of the *Act*.²⁸

[81] The third question is whether disclosure to the appellant is desirable for compassionate reasons.

[82] In Order MO-2237, former Commissioner Brian Beamish held that the exception in section 14(4)(c) applies not only to a deceased individual's personal information alone, but also to their personal information that, as in this case, may be mixed with that of others. Past IPC orders have also attributed significant weight to a requester's need for information about the circumstances of a loved one's death as part of the grieving process²⁹ and have found that, after an individual's death, it is their 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."³⁰ Former Commissioner Beamish found that the exception requires a "broad and all encompassing" analysis that includes consideration of both a surviving family member's need for the information and the privacy interests of the deceased and any other person whose personal information is mixed with that of the deceased.

²⁷ This test was established by former Commissioner Brian Beamish in Orders MOP-2237 and MO-2245.

²⁸ The definition of "close relative" in section 2(1) of the *Act* includes an individual's biological or adoptive child.

²⁹ See, for example, Orders MO-2515 and PO-4563.

³⁰ Orders MO-2237 and MO-2245.

[83] After considering all of the circumstances before me and the parties' representations, I find that disclosure of additional withheld information belonging to the deceased and the affected parties, and where this information is mixed, is not desirable for compassionate reasons.

[84] The exception in section 14(4)(c) is intended to provide access to personal information to a deceased's close relatives where it would assist in the grieving process and when compassionate grounds are evident from the circumstances of the request. In this case, having reviewed the materials before me, I have insufficient basis to conclude that there is a connection between disclosure of the information at issue and a need by the appellant to find closure or assistance with mourning the loss of his father.

[85] The appellant's representations describe the circumstances of his father's death and broadly assert that he should not be "kept in the dark" about how his father was found. However, from my review of the records already partially disclosed to the appellant, I find that they include details about how the appellant's father was found, including descriptions of the scene, his body, and coroner's findings.

[86] The appellant has not explained that additional disclosure is necessary to address his bereavement or to assist him in his grieving process. Rather, based on the appellant's representations and supporting materials, I find that the appellant has identified certain reasons for disclosure that appear to be related more to litigation than a need to assist with grieving or closure. While the administration of the estate may be a legitimate objective, I find that, in the circumstances, it does not meet the requirements of section 14(4)(c), which is intended to address emotional and compassionate needs of grieving close relatives.

[87] Accordingly, I find that the third part of the test has not been met and that the exception in section 14(4)(c) does not apply in the circumstances.

[88] For all of these reasons, I uphold the police's decision to deny access to the remaining personal information in the records and dismiss this appeal.

ORDER:

This appeal is dismissed.

Original Signed by: _____
Jessica Kowalski
Adjudicator

December 30, 2024 _____