

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4634

Appeal MA23-00369

The Greater/Grand Sudbury Police Services Board

March 10, 2025

Summary: The appellant made a request under the *Municipal Freedom of Information and Protection of Privacy Act* to The Greater/Grand Sudbury Police Services Board for access to police reports about his son's death from a suspected drug overdose.

The police granted the appellant access to portions of the reports but refused to disclose certain information because disclosure would be an unjustified invasion of personal privacy under the mandatory personal privacy exemption at section 14(1).

In this order, the adjudicator finds that there are compassionate reasons to disclose some of the deceased's personal information to his father (section 14(4)(c)) and orders the police to disclose that information. She upholds the police's decision to withhold the remaining information under the personal privacy exemption at section 14(1).

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

OVERVIEW:

[1] This appeal considers a father's right of access to details surrounding his son's death from a suspected drug overdose that he believes might assist him in having the police investigation reopened.

[2] The appellant made an access request to The Greater/Grand Sudbury Police

Services Board (the police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for the following:

- Police report for the investigation concerning the death of [the appellant's deceased son (the deceased)] on [date].
- All supplementary reports if any concerning the death of [the deceased] on [date].
- [Witness] statements that were provided by [two affected persons].
- Photographs of [the deceased] as found by the investigating officer on [date].

[3] The police issued a decision granting partial access to the responsive records. The police withheld some information under the discretionary exemptions in section 38(a) (discretion to refuse requester's own information) read with section 8(1) (law enforcement), and section 38(b) (personal privacy). The police also claimed that the mandatory personal privacy exemption in section 14(1) applies to some information. The police's decision also noted that no responsive records were located for the portion of the request that was for witness statements provided by the two affected persons.

[4] The appellant appealed the police's decision to the Information and Privacy Commissioner (the IPC) and a mediator was assigned to attempt a resolution of this appeal.

[5] During mediation, the mediator contacted two affected persons to canvass whether they consented to the disclosure of their personal information to the appellant. Neither affected person provided their consent.

[6] Also, during mediation, the appellant confirmed that he no longer seeks access to the information withheld under 38(a) read with section 8(1) of the *Act*. The police then confirmed that section 38(b) no longer applied as none of the records remaining at issue contain the appellant's personal information. As a result, sections 38(a) and (b) were removed from the scope of this appeal.

[7] At the conclusion of mediation, the only information remaining at issue is that which has been withheld under the personal privacy exemption at section 14(1). The appellant believes this information should be disclosed to him for compassionate reasons as set out in the exception to the personal privacy exemption, under section 14(4)(c).

[8] As mediation did not resolve the appeal, the file moved to the adjudication stage, where an adjudicator may conduct an inquiry. I sought and received representations from the police, the two affected persons, and the appellant.¹

[9] In this order, I partially uphold the police's decision. I find that the exception at

¹ The parties' representations were shared in accordance with the IPC's *Code of Procedure*.

section 14(4)(c) that permits the disclosure of personal information for compassionate reasons applies to some of the information at issue and I order the police to disclose it to the appellant. I also uphold the police's decision to withhold the remaining information under the personal privacy exemption at section 14(1).

RECORDS:

[10] Remaining at issue in this appeal are the withheld portions of two police records:

- Record 1 - a two-page Occurrence Summary (pages 1-2 of the records), and
- Record 2 - a four-page Sudden Death Report (pages 3-6 of the records).

ISSUES:

- A. Do the records contain "personal information" as defined in section 2(1) and, if so, whose personal information is it?
- B. Does the mandatory personal privacy exemption at section 14(1) apply to the information at issue?

DISCUSSION:

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

[11] In order to decide whether the mandatory personal privacy exemption at section 14(1) applies to a record, the IPC must first decide whether the record contains "personal information," and if so, to whom the personal information relates.

[12] Section 2(1) of the *Act* defines "personal information" as "recorded information about an identifiable individual."

[13] "Recorded information" is information recorded in any format, such as paper records, electronic records, digital photographs, videos, or maps.²

[14] Information is "about" the individual when it refers to them in their personal capacity, which means that it reveals something of a personal nature about the individual. Generally, information about an individual in their professional, official, or business capacity is not considered to be "about" the individual.³

² See the definition of "record" in section 2(1).

³ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

[15] Information is about an “identifiable individual” if it is reasonable to expect that an individual can be identified from the information either by itself or if combined with other information.⁴

Representations

[16] The police claim that the records contain personal information of the type described in all paragraphs of the definition of personal information at section 2(1) of the *Act*, except paragraph (f). These paragraphs read:

“personal information” means recorded information about an identifiable individual, including,

(a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,

(b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,

(c) any identifying number, symbol or other particular assigned to the individual,

(d) the address, telephone number, fingerprints or blood type of the individual,

(e) the personal opinions or views of the individual except if they relate to another individual,

...

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

(h) the individual’s name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.⁵

[17] The police submit that the records do not contain any personal information relating

⁴ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

⁵ The list of examples of personal information under section 2(1) is not a complete list. This means that other kinds of information could also be “personal information.” Sections 2(2), (2.1) and (2.2) of the *Act* exclude some information from the definition of personal information. These sections do not apply in this appeal.

to the appellant but that they do contain the personal information of the appellant's deceased son. The police also submit that the records contain the personal information of other identifiable individuals, including that of the two affected persons. The police provided detailed representations as to the type of personal information found on each page of the records.

[18] The police submit that the records contain the following types of "personal information" as defined in the definition of that term in section 2(1):

Information about relationship status, genders, and date of births (a), past involvement with the police and medical information (b), personal identifying numbers (c), phone numbers and addresses (d), statements made to police and emergency call takers (e) and (g), and names (h).

[19] The appellant did not address this issue in his representations.

Findings

[20] It is important to know whose personal information is in the record. If the record contains the requester's own personal information, their access rights are greater than if it does not.⁶ Also, if the record contains the personal information of other individuals, one of the personal privacy exemptions might apply.⁷

[21] From my review of the records, I agree with the police that the records do not contain the appellant's personal information. I also agree with the police that they contain the personal information of other identifiable individuals in their personal capacity, specifically that of the appellant's deceased son and the two affected persons. From my review, I find that the personal information in the records is as described by the police in their representations and falls within the relevant paragraphs of the definition of personal information at section 2(1) of the *Act*.

[22] Accordingly, I find that both record 1 and record 2 contain the personal information of identifiable individuals as that term is defined in section 2(1) of the *Act*.

Issue B: Does the mandatory personal privacy exemption at section 14(1) apply to the information at issue?

[23] One of the purposes of the *Act* is to protect the privacy of individuals with respect to personal information about themselves held by institutions.

[24] 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

⁶ Under sections 36(1) and 38 of the *Act*, a requester has a right of access to their own personal information, and any exemptions from that right are discretionary, meaning that the institution can still choose to disclose the information even if the exemption applies.

⁷ See sections 14(1) and 38(b).

to a number of exceptions.

[25] 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. The parties have not claimed that any of these exceptions apply and from my review, none of them do.

[26] The section 14(1)(f) exception is more complicated. It requires the institution to disclose another individual's personal information to a requester only if this would not be an "unjustified invasion of personal privacy." Other parts of section 14 must be looked at to decide whether disclosure of the other individual's personal information would be an unjustified invasion of personal privacy.

[27] Sections 14(2), (3), and (4) help in deciding whether disclosure would or would not be an unjustified invasion of personal privacy.

[28] Sections 14(3)(a) to (h) should generally be considered first.⁸ These sections outline several situations in which disclosing personal information is presumed to be an unjustified invasion of personal privacy.

[29] 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").⁹

[30] If the personal information being requested does not fit within any presumptions under section 14(3), one must next consider the factors set out in section 14(2) to determine whether or not disclosure would be an unjustified invasion of personal privacy. However, if any of the situations in section 14(4) is present, then section 14(2) need not be considered.

Section 14(3)(b): investigation into a possible violation of law

[31] The police rely on the presumption against disclosure at section 14(3)(b) to deny access to the personal information withheld under section 14(1). Section 14(3)(b) reads:

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

⁸ 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.

⁹ *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.).

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.

[32] The police submit that the personal information in records 1 and 2 was compiled and is identifiable as part of an investigation into a possible violation of law related to the death of the appellant's son. They state that although charges were not laid and criminal proceedings were not commenced, there was an investigation into a possible violation of law.

[33] In his representations, the appellant did not address the issue of whether the presumption at section 14(3)(b) applies to the information at issue.

Findings on section 14(3)(b): investigation into a possible violation of law

[34] The section 14(3)(b) presumption requires only that there be an investigation into a possible violation of law.¹⁰ Even if criminal proceedings were never started against the individual, section 14(3)(b) may still apply.¹¹

[35] It is clear that the records at issue are police reports created in the course of a law enforcement investigation into the death of the appellant's son. As revealed by the disclosed portions of the records, this death occurred in suspicious circumstances in which the police had to clarify whether any violation of law had occurred. As the records were clearly compiled by the police in the course of their investigation into whether the appellant's son's death was a result of a possible violation of law, I find that the presumption against disclosure in section 14(3)(b) applies in this appeal.

Section 14(4)(c): personal information of deceased individual for compassionate reasons

[36] As indicated above, if one of the section 14(3) presumptions applies, as is the case here, 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").¹²

[37] Section 16 has not been raised by the appellant and from my review, it does not appear to apply. However, the appellant does raise the possible application of section

¹⁰ Orders P-242 and MO-2235.

¹¹ The presumption can also apply to records created as part of a law enforcement investigation where charges were laid but subsequently withdrawn (Orders MO-2213, PO-1849 and PO-2608).

¹² *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.).

14(4)(c). Section 14(4)(c) reads:

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

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

[38] The term “close relative” is defined in section 2(1) of the *Act* as “a parent, child, grandparent, grandchild, brother, sister, uncle, aunt, nephew or niece, whether related by blood or adoption.”

[39] It is not disputed by the parties that the appellant, as the deceased’s father, is a close relative of his son as defined in the *Act*.

[40] If section 14(4)(c) of the *Act* applies, disclosure of personal information is not an unjustified invasion of personal privacy, even if one of the section 14(3) presumptions exists.

[41] Section 14(4)(c) provides for the disclosure of the personal information of a deceased individual, if disclosure to a “close relative” would be desirable for compassionate reasons.

[42] In order for this section to apply, the following conditions must apply:

1. the records 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.¹³

[43] The police submit that the appellant was granted access to the majority of his deceased son’s personal information based on their application of the compassionate grounds consideration at section 14(4)(c). They submit that nearly all of the information pertaining to the appellant’s son was disclosed to him, almost as much as the police would have disclosed to the appellant’s son himself.

[44] The appellant believes that the police’s investigation into his son’s death was not in accordance with their own protocols and procedures, which he argues requires them to conduct a thorough and proper investigation if there are suspicious circumstances surrounding a death. He states that he wants the police to reopen the investigation

¹³ Orders MO-2237 and MO-2245.

because he has many questions regarding his son's death that the police have not addressed.

[45] The appellant submits that as the father of the deceased, he should be granted access to both the occurrence report and the sudden death report, in their entirety, to allow him to make the case for the police to reopen the investigation. He also submits that he seeks access to the withheld information to ensure that in their investigation, the police treated his son with dignity and respect.

[46] In reply, the police submit that, besides withholding names, date of births, genders, addresses, vague personal residence descriptors, phone numbers, relationship status, and personal identifying numbers of the affected persons, they have withheld descriptions of the affected persons' personal feelings, the appellant's son's medical information, and the appellant's son's past involvement with other identifiable individuals.

[47] The police submit that they determined that disclosure of the information about the appellant's son that remains at issue is not desirable for compassionate reasons under section 14(4)(c) as it is so intertwined with the personal information of other identifiable individuals and/or does not include information about the investigation, including the processes followed by the police, their observations at the scene, or evidentiary information.

[48] The police further submit that they determined that disclosure of the remaining portions to the appellant is not desirable for compassionate reasons under section 14(4)(c) because none of this information addresses any of the appellant's concerns as set out in his representations. They also submit that disclosure of the remaining information would be an unjustified invasion of the personal privacy of other identifiable individuals, specifically the affected persons.

[49] The police further submit that although they granted the appellant access to some information for compassionate reasons, compassionate access does not necessarily mean that the appellant should be granted full, unredacted access. The police submit that they are still obligated to protect the personal information of the deceased if it is determined that disclosure is not desirable for compassionate reasons.

Findings on section 14(4)(c): personal information of deceased individual for compassionate reasons

[50] In response to his request for information, the police disclosed to the appellant an unredacted copy of a Supplementary Occurrence Report from March 2023 (page 7 of the records) which summarizes the final autopsy report. The summary states that the autopsy report determines the cause of death of the appellant's son as a suspected drug overdose. The appellant also received seven police photographs showing various views of the room where his son's body was located.

[51] The two records that remain at issue are, as noted above, a two-page Occurrence

Summary (record 1) and a four-page Sudden Death Report (record 2). Record 1 is a summary detailing the police's attendance at the scene before they entered the house where the appellant's son's body was located. Record 2 is a summary of the police's observations on their attendance at the house and includes details of their investigation in locating the appellant's son's body.

[52] The police granted the appellant access to some, but not all, of the information in records 1 and 2. Included in the information withheld by the police is information that relates to the appellant's son's background, statements made to the police by the affected persons about the appellant's son's history, and certain observations made by the police at the scene where the appellant's son's body was located.

[53] The appellant takes the position that he should be granted access to the withheld portions of records 1 and 2 as disclosure is desirable for compassionate reasons as contemplated by section 14(4)(c). Specifically, he states that he is seeking access to any remaining investigative details in the records to obtain a full picture of how his son died. He also submits that he requires this information to address his concerns about the adequacy of the police's investigation into the circumstances of his son's death. The appellant has not indicated that he seeks access to any of the affected persons' or other identifiable individuals' biographical information, which includes names, ages, genders, addresses, relationship status, and personal identifying numbers.

[54] For section 14(4)(c) to apply, the institution (or on appeal, the IPC) 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.¹⁴ After the death of an individual, it is generally accepted 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."¹⁵

[55] Personal information about an individual who has died can include information that also belongs to another individual. The factors referred to in section 14(2) may provide some help in deciding whether the personal information belonging to the other individual should be disclosed for compassionate reasons. However, the overall circumstances must be considered when deciding whether the disclosure of information under section 14(4)(c) would interfere with that individual's right to privacy.¹⁶

[56] Regarding the factors in section 14(2), the police have relied specifically on section 14(2)(h), which weighs against disclosure if it is established that the personal information at issue was supplied by the individual to whom the information relates, in confidence. The police note that the affected persons have not consented to the disclosure of their personal information.

¹⁴ Order MO-2245.

¹⁵ Order MO-2245.

¹⁶ Order MO-2237.

[57] Generally, both the individual supplying the information and the recipient must have had a reasonable expectation that the information would be treated confidentially. This requires an objective assessment of whether the expectation of confidentiality is "reasonable."¹⁷ Neither affected person, nor the police, specifically addressed whether the information that the affected persons provided to the police was supplied with a reasonable expectation of confidence.

[58] From my review of records 1 and 2, the information that has been withheld includes certain information regarding the circumstances of how the appellant's son died and some of the police's observations at the scene. This information includes information about the appellant's son's background, including statements made by affected persons about the appellant's son and their relationship to or involvement with him. In my view, disclosure of this personal information is desirable for compassionate reasons under section 14(4)(c) as it would provide the appellant with a better understanding of the circumstances surrounding his son's death and assist him in his grieving process.

[59] As a result, I have identified that the following information in the records that should be disclosed to the appellant under section 14(4)(c):

- information about the appellant's son's background,
- portions of the statements made by the affected persons to the police about the appellant's son's history and their involvement with him,
- information that describes the police's observations of the scene, and
- information that describes where and how the appellant's son's body was located.

[60] In my view, disclosure of these types of information would provide the appellant with additional information about his son's death that is desirable for compassionate reasons. As I have found that section 14(4)(c) applies to this information, I will order the police to disclose it to the appellant.

[61] In finding that the disclosure of certain portions of statements made by affected persons is desirable for compassionate reasons under section 14(4)(c), I acknowledge that some personal information of these individuals will be disclosed to the appellant. However, I have considered the relationship between the appellant, his son, and the affected persons as reflected in the records and in the parties' representations. I have also considered that the affected persons have not consented to disclosure of their personal information to the appellant. Finally, I have also considered the circumstances surrounding the appellant's son's death, as outlined in the disclosed portions of the records.

[62] As noted above, when personal information about an individual who has died

¹⁷ Order PO-1670.

includes information that also belongs to another individual, the overall circumstances must be considered when deciding whether the disclosure of information under section 14(4)(c) would interfere with that individual's right to privacy.¹⁸ Having considered all of the evidence before me, I find that the factor in section 14(2)(h) weighing against disclosure of the affected persons' personal information, though relevant, does not outweigh the overall circumstances in this appeal that weigh in favour of disclosure to the appellant of certain information about his deceased son for compassionate reasons under section 14(4)(c).

[63] I find, however, that the exception in section 14(4)(c) does not apply to the remaining personal information that has been withheld from records 1 and 2. This information includes the personal information of affected persons' that is not intertwined with the personal information of the appellant's son and does not relate to the circumstances of his death. This information also includes biographical information about the affected persons, such as their names, ages, genders, addresses, relationship status, and personal identifying numbers.

[64] As I found above that the presumption against disclosure in section 14(3)(b) applies to this withheld information and it is not subject to the exception at section 14(4)(c), I find that this information is exempt from disclosure under the mandatory section 14(1) exemption. I will uphold the police's decision not to disclose it.

ORDER:

1. I order the police to disclose the information I have found not exempt by reason of the exception at section 14(4)(c) to the appellant **by April 14, 2025**, but not before **April 9, 2025**. For ease of reference, I have provided the police with a highlighted copy of the six pages of the records highlighting the information at issue that should be disclosed to the appellant.
2. I uphold the police's decision that the remaining information at issue in the records is exempt under section 14(1).
3. I reserve the right to require the police to provide me with a copy of the information disclosed to the appellant in accordance with order provision 1.

Original Signed by: _____
Diane Smith
Adjudicator

March 10, 2025 _____

¹⁸ Order MO-2237.