

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2021-35

September 10, 2021

EDMONTON POLICE SERVICE

Case File Number 012547

Office URL: www.oipc.ab.ca

Summary: The Applicants made an access request under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) to the Edmonton Police Service (the Public Body). The Applicants requested the police file that had been opened to investigate the death of their daughter. The police investigation concluded that the Applicants' daughter died by suicide. The Applicants requested the file in order to learn more about the circumstances of their daughter's death and to come to terms with it. The Public Body provided some information from the records on compassionate grounds, but withheld the remainder on the basis that it would be an unreasonable invasion of the personal privacy of the deceased and other third parties whose personal information was contained in the records.

The Adjudicator determined that the interests of family members in coming to terms with their loss was a relevant consideration in determining whether personal information could be disclosed to the family members. In most cases, she found that this factor applied and outweighed the public interests that supported withholding the personal information of the deceased from the Applicants. The Adjudicator found that the personal information of other individuals in the records was "sensitive," going to the "biographical core" of the individuals, within the terms of *Sherman Estate v. Donovan*, 2021 SCC 25 (CanLII). The Adjudicator found that the public interest weighed in favor of withholding the personal information of individuals other than the deceased in the records.

The Adjudicator directed the Public Body to disclose further personal information regarding the deceased, but confirmed its decisions regarding the remaining information.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25 ss. 1, 17, 40, 72, 84

Authorities Cited: AB: Order F2012-24

Cases Cited: *Edmonton (City) v Alberta (Information and Privacy Commissioner)*, 2016 ABCA 110 (CanLII); *Sherman Estate v. Donovan*, 2021 SCC 25 (CanLII)

1. BACKGROUND

[para 1] The Applicants made an access request under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) to the Edmonton Police Service (the Public Body). The Applicants requested the police file that had been opened to investigate the death of their daughter. The police investigation concluded that the Applicants' daughter died by suicide. The Applicants requested the file in order to learn more about the circumstances of their daughter's death and to come to terms with it.

[para 2] The Public Body located the requested file. It determined that the information in the file consisted of the personal information of the Applicants' daughter and her spouse, in addition to the personal information of other third parties. The Public Body released some information to the Applicants from the file on the basis of section 40(1)(cc) of the FOIP Act, which states:

40(1) A public body may disclose personal information only

(cc) to the surviving spouse or adult interdependent partner or a relative of a deceased individual if, in the opinion of the head of the public body, the disclosure is not an unreasonable invasion of the deceased's personal privacy [...]

[para 3] The Public Body withheld the remaining information on the basis that it would be an unreasonable invasion of personal privacy of the deceased, and of other third parties whose personal information was intertwined with the deceased's personal information, to disclose it to the Applicants.

[para 4] The Applicants requested review by the Commissioner of the Public Body's decision to withhold information from the file.

II. ISSUE

ISSUE A: Does section 17(1) of the Act (disclosure an unreasonable invasion of personal privacy) apply to the information to which the Public Body applied this provision?

[para 5] Section 17 of the FOIP Act directs public bodies not to disclose personal information if doing so would invade the personal privacy of an identifiable individual. It states, in part:

17(1) The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy...

17(2) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if

...

(i) the personal information is about an individual who has been dead for 25 years or more [...]

...

[...]

(4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if

[...]

(b) the personal information is an identifiable part of a law enforcement record, except to the extent that the disclosure is necessary to dispose of the law enforcement matter or to continue an investigation [...]

[...]

(g) the personal information consists of the third party's name when

(i) it appears with other personal information about the third party, or

(ii) the disclosure of the name itself would reveal personal information about the third party [...]

[...]

(5) In determining under subsections (1) and (4) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether

(a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Alberta or a public body to public scrutiny

- (b) *the disclosure is likely to promote public health and safety or the protection of the environment,*
- (c) *the personal information is relevant to a fair determination of the applicant's rights,*
- (d) *the disclosure will assist in researching or validating the claims, disputes or grievances of aboriginal people,*
- (e) *the third party will be exposed unfairly to financial or other harm,*
- (f) *the personal information has been supplied in confidence,*
- (g) *the personal information is likely to be inaccurate or unreliable,*
- (h) *the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant, and*
- (i) *the personal information was originally provided by the applicant.*

[para 6] If the disclosure of personal information would be an unreasonable invasion of a third party's personal privacy, a public body must refuse to disclose the information to an applicant under section 17(1). Section 17(2) sets out the circumstances in which disclosing certain kinds of personal information is not an unreasonable invasion of personal privacy.

[para 7] When the specific types of personal information set out in section 17(4) are involved, disclosure is subject to a rebuttable presumption that it would be an unreasonable invasion of a third party's personal privacy to disclose the information. To determine whether disclosure of personal information would be an unreasonable invasion of the personal privacy of a third party, a public body must consider and weigh all relevant circumstances under section 17(5), (unless section 17(3), which is restricted in its application, applies), and balance these against any presumptions arising under section 17(4). Section 17(5) is not an exhaustive list and any other relevant circumstances must be considered. If, on the balance, it would not be an invasion of personal privacy to disclose an individual's personal information, a public body may give an individual's personal information to a requestor.

[para 8] Section 40(1)(cc), cited in the background above, gives a public body, in the absence of an access request, discretion to disclose personal information to family members of deceased persons on compassionate grounds to the extent that doing so would not be an unreasonable invasion of the deceased's personal privacy.

[para 9] Section 1(n) of the FOIP Act defines personal information for the purposes of the Act. It states:

1 In this Act

- (n) *“personal information” means recorded information about an identifiable individual, including*
- (i) the individual’s name, home or business address or home or business telephone number,*
 - (ii) the individual’s race, national or ethnic origin, colour or religious or political beliefs or associations,*
 - (iii) the individual’s age, sex, marital status or family status,*
 - (iv) an identifying number, symbol or other particular assigned to the individual,*
 - (v) the individual’s fingerprints, other biometric information, blood type, genetic information or inheritable characteristics,*
 - (vi) information about the individual’s health and health care history, including information about a physical or mental disability,*
 - (vii) information about the individual’s educational, financial, employment or criminal history, including criminal records where a pardon has been given,*
 - (viii) anyone else’s opinions about the individual, and*
 - (ix) the individual’s personal views or opinions, except if they are about someone else*

Section 17 is limited in its application to “personal information”, that is, information about an identifiable individual as defined in section 1(n).

[para 10] Section 17(2)(i) of the FOIP Act establishes that it is not an invasion of personal privacy to disclose personal information about someone who has been deceased for 25 years or more. The implication of this provision is that if a person has been dead for less than 25 years, it may be an unreasonable invasion of the individual’s personal privacy to disclose the individual’s personal information. Section 40(1)(cc) requires the head of a public body to consider providing the personal information of a deceased individual to family members if it would not be an unreasonable invasion of the deceased individual’s personal privacy to do so, which also suggests that the FOIP Act contemplates that a deceased person’s personal privacy could be invaded.

[para 11] Section 40(1)(cc) has been interpreted as allowing a public body to disclose the personal information of deceased persons for compassionate reasons. In Order F2012-24, the Director of Adjudication said:

In my view, in appropriate circumstances, section 40(1)(cc) permits public bodies to disclose personal information to family members, even though there is nothing to suggest that the deceased would themselves have disclosed it; in other words, the purpose is also to meet the needs of the family members to deal, whether emotionally or practically, with the death and its consequences (as long as there is no unreasonable invasion of the deceased's privacy). In such circumstances, presumably the fact and nature of the relationship to the deceased is a factor that may be taken into account in determining whether the disclosure would invade the deceased's privacy.

I find support for this view in Ontario Order MO-2404. Section 14(4)(c) of Ontario's *Municipal Freedom of Information and Protection of Privacy Act* states that it is not an unjustified invasion of personal privacy to disclose "personal information about a deceased individual to the spouse or a close relative of the deceased individual, [when] the head is satisfied that, in the circumstances, the disclosure is desirable for compassionate reasons." In Order MO-2404, the Adjudicator described the kinds of information that may be disclosed for compassionate reasons under section 14(4)(c) (at para 48 and 49), as follows:

... The family of the deceased has experienced the tragic loss of a loved one and I am satisfied that obtaining as much information as possible regarding the circumstances surrounding the deceased's death can be a vital part of the family's grieving process. Clearly, the deceased's family is in the best position to determine the therapeutic value of any personal information received. In my view, this was the intent of the Legislature in adding section 14(4)(c) to the Act. Accordingly, I am satisfied that disclosure of the personal information of the deceased is desirable for compassionate reasons.

However, disclosing the deceased's personal information could present a challenge in places where it is intertwined with the personal information of a number of other identifiable individuals who were interviewed by the Police as witnesses to the accident. The question is whether the intrusion on the personal privacy of these affected parties is necessary and justified in order to provide the appellant with access to the deceased's personal information. In my view, it is not. However, I am satisfied that for the most part the deceased's personal information can be disclosed without compromising the personal privacy of the affected parties by simply removing all personal identifiers associated with the affected parties in the records. In my view, this strikes a fair balance, allowing the deceased's family access to the deceased's personal information and the insight and understanding it seeks into the circumstances surrounding his death, while preserving the affected parties' personal privacy.

While the Alberta legislation does not specifically speak of compassion, in my view, this is necessarily one of the considerations the Legislature had in mind in allowing a Public Body to disclose information to relatives in preference to others. I agree that this kind of "compassionate" consideration can be, and in many cases likely would be, a relevant consideration for disclosure to family members under section 40(1)(cc). I also agree that as much information that could achieve these purposes should be disclosed as possible (that is, without unreasonably invading the deceased's personal privacy).

[para 12] As the Director of Adjudication noted in the foregoing excerpt, the FOIP Act does not expressly refer to compassion. However, section 40(1)(cc) appears to acknowledge that there is a public interest in disclosing information about a deceased person to close family members for compassionate reasons, which may include

permitting the family members to learn more information in order to come to terms with their loss.

What are the privacy interests of a deceased person?

[para 13] Section 84 states, in part:

84(1) Any right or power conferred on an individual by this Act may be exercised

(a) if the individual is deceased, by the individual's personal representative if the exercise of the right or power relates to the administration of the individual's estate [...]

While section 84 authorizes a personal representative to exercise a deceased individual's rights or powers under the FOIP Act, the personal representative may only do so as part of the administration of the deceased's estate. Section 84 creates the ability for a personal representative to make an access request on behalf of a deceased individual, but it does not create the ability to make a complaint under the FOIP Act regarding the disclosure of personal information, or to continue such a complaint, assuming one was instituted in the deceased's lifetime. There is also no duty in the FOIP Act to provide notice to the estate or personal representative of a deceased person regarding the intended disclosure of personal information, given that section 84 does not contemplate receiving or providing such notice, and accordingly, no ability for an estate or personal representative to enforce any right not to have personal privacy invaded.

[para 14] Sections 17 and 40 create a duty in the head of a public body to avoid disclosing the personal information of deceased individuals if doing so would be an unreasonable invasion of personal privacy. The question becomes, to whom is the duty owed? If the duty is owed to the deceased individual, there should be a corresponding right in the deceased person to enforce this duty; however, the FOIP Act provides no such ability. As a result, it may not be accurate to say that the FOIP Act creates or continues privacy rights in deceased persons, as rights are, by definition, enforceable.

[para 15] In my view, section 40(1)(cc) creates a duty to consider disclosure of a deceased's personal information to close friends and family members, but this duty is owed to the public, in the sense that there is a public interest in providing personal information about a deceased person that may assist friends and family to come to terms with the death. Similarly, the duty not to invade a deceased person's personal privacy is intended to serve the public interest in ensuring that sensitive personal information that individuals usually would not want known is not disclosed arbitrarily. Citizens expect government agencies to keep their personal information private and to use and disclose it only for the purposes for which it was collected, even after death; however, there is also a public expectation that when close friends and family members seek personal information to assist them to come to terms with an individual's death, a public body will consider providing what is necessary. A balance must be struck between the two interests, by applying the criteria set out in section 17, cited above.

[para 16] In *Sherman Estate, supra*, the Supreme Court of Canada determined how the balance between competing public interests may be determined. In that case, the Court had to decide whether the open Court principle required the disclosure of personal information, or whether there were sufficient interests at stake to warrant withholding personal information from the public. The Court held:

If the interest is ultimately about safeguarding a person’s dignity, that interest will be undermined when the information reveals something sensitive about them as an individual, as opposed to generic information that reveals little if anything about who they are as a person. Therefore the information that will be revealed by court openness must consist of intimate or personal details about an individual — what this Court has described in its jurisprudence on s. 8 of the *Charter* as the “biographical core” — if a serious risk to an important public interest is to be recognized in this context (*R. v. Plant*, 1993 CanLII 70 (SCC), [1993] 3 S.C.R. 281, at p. 293; *R. v. Tessling*, 2004 SCC 67, [2004] 3 S.C.R. 432, at para. 60; *R. v. Cole*, 2012 SCC 53, [2012] 3 S.C.R. 34, at para. 46. Dignity transcends personal inconvenience by reason of the highly sensitive nature of the information that might be revealed. This Court in *Cole* drew a similar line between the sensitivity of personal information and the public interest in protecting that information in reference to the biographical core. It held that “reasonable and informed Canadians” would be more willing to recognize the existence of a privacy interest where the relevant information cuts to the “biographical core” or, “[p]ut another way, the more personal and confidential the information” (para. 46). The presumption of openness means that mere discomfort associated with lesser intrusions of privacy will generally be tolerated. But there is a public interest in ensuring that openness does not unduly entail the dissemination of this core information that threatens dignity — even if it is “personal” to the affected person.

The test for discretionary limits on court openness imposes on the applicant the burden to show that the important public interest is at serious risk. Recognizing that privacy, understood in reference to dignity, is only at serious risk where the information in the court file is sufficiently sensitive erects a threshold consistent with the presumption of openness. This threshold is fact specific. It addresses the concern, noted above, that personal information can frequently be found in court files and yet finding this sufficient to pass the serious risk threshold in every case would undermine the structure of the test. By requiring the applicant to demonstrate the sensitivity of the information as a necessary condition to the finding of a serious risk to this interest, the scope of the interest is limited to only those cases where the rationale for not revealing core aspects of a person’s private life, namely protecting individual dignity, is most actively engaged.

There is no need here to provide an exhaustive catalogue of the range of sensitive personal information that, if exposed, could give rise to a serious risk. It is enough to say that courts have demonstrated a willingness to recognize the sensitivity of information related to stigmatized medical conditions (see, e.g., *A.B.*, at para. 9), stigmatized work (see, e.g., *Work Safe Twerk Safe v. Her Majesty the Queen in Right of Ontario*, 2021 ONSC 1100, at para. 28 (CanLII)), sexual orientation (see, e.g., *Paterson*, at paras. 76, 78 and 87-88), and subjection to sexual assault or harassment (see, e.g., *Fedeli v. Brown*, 2020 ONSC 994, at para. 9 (CanLII)). I would also note the submission of the intervener the Income Security Advocacy Centre, that detailed information about family structure and work history could in some circumstances constitute sensitive information. The question in every case is whether the information reveals something intimate and personal about the individual, their lifestyle or their experiences.

[para 17] In my view, the question of whether personal information reveals something intimate or personal about the individual, such as their lifestyle or experiences is a factor that may be considered under section 17(5). As discussed above, section 17(5) does not contain an exhaustive list of factors and all relevant factors weighing for or

against disclosure must be considered. Some of the factors set out in section 17(5) are problematic because some of them, for example, sections 17(5)(e) and (h) contain onerous burdens of proof and require a value judgment in order to find that they apply. Finding it likely that an individual's reputation will be unfairly damaged by disclosure may be as invasive of an individual's personal privacy as disclosing the personal information in question, given that the finding could be viewed as intimating that there is something scandalous in the records that will destroy a party's reputation if disclosed.

[para 18] In its initial submissions, the Public Body stated:

The personal information of the third parties contained in the Responsive Records are often intimate in nature, and where the Deceased has offered views and opinions of third parties, they are directly solely to the third parties and not the Applicants. In some instances, it is not clear whether the Deceased wanted her views and opinions to be disclosed to anyone, or whether she was only keeping a personal records of her thoughts at a given time.

In a case where a deceased's wishes regarding disclosure of his or her personal information are known, I agree with the Public Body that they must be considered. At the same time, they may be outweighed by a greater public interest served by disclosure or nondisclosure, should any such exist. A public body is also not in a position to guess what the deceased's wishes would have been or to speak for the deceased, particularly to close friends or family who knew the deceased. All the public body can do is review the nature of the information, the presumptions set out in the FOIP Act and the interests weighing for or against disclosure, as required by section 17(5) to make a decision.

[para 19] Section 17(5), cited above, requires the balancing of relevant interests weighing for or against disclosure in order to determine whether disclosing personal information to a requestor would be an unreasonable invasion of personal privacy. The considerations discussed above – the public interest in providing information to grieving family and friends and the public interest in not disclosing highly sensitive personal information that most people would not want disclosed if it were about them, are both relevant considerations under section 17(5).

[para 20] As discussed in Order F2012-24, the compassionate factor weighs strongly in favor of disclosing the deceased person's personal information under section 17(5) if the information serves this purpose. In addition, this factor may outweigh concerns that the deceased may not have wanted the information disclosed, provided no other factors weighing in favor of withholding the information apply. However, as the Director of Adjudication noted in Order F2012-24, cited above, this factor does not outweigh the privacy interests of third parties whose personal information may be intertwined with that of the deceased individual. Nevertheless, if it possible to sever the information of third parties from the records, the remaining information may be provided to applicants for compassionate reasons, should no other factors weigh against disclosing the information.

Section 17(4)

[para 21] In this case, the information the Applicants are seeking is information contained in a police file. Some of the information is identifiable as being part of a police file, such as the records created by police officers as part of the investigation and the personal information contained in them. This information is subject to the presumption created by section 17(4)(b). Other information, such as some of the records of the contents of the deceased's phone, is not identifiable as being part of a police file absent the context of the other records. The personal information in these records is subject to the presumption set out in section 17(4)(g), given that the information contains the names of individuals in the context of other information about them. Regardless, both types of information are subject to a presumption that it would be an invasion of the personal privacy of the individuals whom it is about to disclose it. The question becomes whether this presumption is rebutted by relevant factors under section 17(5). In making this determination I will consider the interests weighing in favor of withholding the information and of disclosing it, as discussed above.

Record 5

[para 22] The Public Body severed the name of a third party and the city in which the third party lives. Record 5 is an identifiable part of a police file, and is, accordingly, subject to a strong presumption that it would be an unreasonable invasion of personal privacy to disclose the information. In addition, by severing the name here, the Public Body was also able to sever the name in other places in the records so that more information could be provided to the Applicants that would otherwise have to be withheld under section 17(1). On the evidence before me, I am unable to say that disclosure of the name would serve any beneficial purpose.

[para 23] With regard to severing the city name, I am not convinced that there is any benefit to severing this information, given that the third party's name has been severed. If the city name was severed to guard against the risk that this alone would serve to identify the third party, I believe that the city has too large a population for this to be a realistic concern.

[para 24] I will confirm the Public Body's decision to sever the name of the third party but not the name of the city appearing below the name.

Records 6 - 8

[para 25] The Public Body severed brief descriptions of two rooms in the house from record 6 – an office and a bedroom. The descriptions are the investigating officer's brief impressions of areas in the house that could be significant to the investigation. I am not satisfied that this information is personal information of either the deceased or a third party. In this case, the information is simply about rooms and what the officer noticed was in them. The descriptions are not detailed enough to give any sense of the personal taste or interests of an identifiable individual. In *Edmonton (City) v Alberta (Information*

and Privacy Commissioner), 2016 ABCA 110 (CanLII), the Alberta Court of Appeal noted that personal information is generally “about a person”, rather than “about an object”, stating:

In general terms, there is some universality to the conclusion in *Leon’s Furniture* that personal information has to be essentially “about a person”, and not “about an object”, even though most objects or properties have some relationship with persons. As the adjudicator recognized, this concept underlies the definitions in both the *FOIPP Act* and the *Personal Information Protection Act*. It was, however, reasonable for the adjudicator to observe that the line between the two is imprecise. Where the information related to property, but also had a “personal dimension”, it might sometimes properly be characterized as “personal information”. In this case, the essence of the request was for complaints and opinions expressed about Ms. McCloskey. The adjudicator’s conclusion (at paras. 49-51) that this type of request was “personal”, relating directly as it did to the conduct of the citizen, was one that was available on the facts and the law.

From the foregoing, I understand that information about objects associated with an individual that can allow accurate inferences to be drawn about the individual, such as information about lifestyle choices or whether the individual has been the subject of complaints will be an individual’s personal information. However, if information about objects does not allow accurate inferences to be drawn about an identifiable individual, then the information is not personal information.

[para 26] With regard to the descriptions of the rooms and furnishings, I find there is insufficient detail to draw inferences or conclusions about an identifiable individual. I therefore find that this information is not personal information and I find that this information may be disclosed to the Applicants.

[para 27] Turning to the descriptions of the deceased’s body in these records and how it was found, I accept that the information reflects decisions made by the deceased when she was alive and provides some information about how she lived. As a result, I accept that the information is the deceased’s personal information and subject to a presumption that it would be an unreasonable invasion of personal privacy to disclose it. I also find that this personal information is solely about the deceased. I will therefore consider whether the Applicants’ interests in obtaining the information outweigh the public interests associated with withholding it.

[para 28] I believe that the Public Body severed the information on the basis that most people would prefer not to have information of this kind disclosed. The Public Body likely also hoped to spare the Applicants further upset or psychological harm. In other words, the Public Body considered the public interests in withholding the information, including compassionate considerations and found these outweighed any benefits in disclosure. However, I have the benefit of the Applicants’ rebuttal submissions, which speak to a strong interest in disclosure. These submissions contain information regarding the impact of the deceased’s death on her family, and the reasons the Applicants are seeking the information. At the time the access request was made, this information was not available to the Public Body.

[para 29] The affidavit submitted by the Applicants explains the impact of their daughter's death on their lives. It also explains that grief counselling has been less effective than it would otherwise be, as they have insufficient information as to what happened to be able to process it through counselling. I will not reproduce the affidavit here as it is very personal.

[para 30] I find that the Applicants have raised a relevant factor that weighs strongly in favor of disclosure of the information severed from these records – that is, the public interest in allowing families to come to terms with a loved one's death. With regard to their daughter's personal information, I find that this factor outweighs any interests in withholding the information. With regard to the personal information of a third party appearing in these records, I find that this factor does not outweigh the interests in protecting the third party's personal privacy. When I refer to a third party's personal information in these records, I am referring to the name, and to the contents of a note written by the deceased to a third party that is summarized, and which contains personal information about the third party.

[para 31] With regard to the end of paragraph 3 of record 8, the Public Body must not disclose information about a third party; however, I find that if such information is severed, the remaining information may be provided to the Applicants. To be clear, the part of the sentence beginning with the word "also" to the end of the sentence ending with "had" may be disclosed, provided any identifying information of a third party is severed from this sentence.

[para 32] To summarize my decision in relation to records 6 – 8, I find that all severed information other than the personally identifying information of a third party who is not the deceased should be disclosed to the Applicants.

Record 9

[para 33] The Public Body severed summaries of a "Whatsapp" conversation and of electronic notes. The severed information contains the personal information of third parties, and not merely that of the Applicant, I agree with the Public Body that the interests in withholding this information outweigh any interests in disclosing it and I will confirm its decision, but for the last note that indicates the time at which the note was edited, as this does not provide any information about third parties, other than the deceased. I find that the times of the notes provides greater information to the Applicants and serves the public interest in assisting the family members of a deceased person.

[para 34] With regard to the summaries of other notes on record 9, I will direct the Public Body to disclose the note beginning "One note" and ending "of" to the Applicants. This note contains only information about the deceased and disclosure would serve the purpose of assisting the family members of a deceased person. I will also direct the Public Body to disclose the note beginning "One note last" and ending "anymore" which also contains information solely about the deceased and serves the public interest in assisting the family members of a deceased person.

[para 35] With regard to the remaining severing decisions appearing on record 9, I confirm the Public Body's decision to sever the information on the basis that it is the personal information of third parties.

Record 10

[para 36] The Public Body severed three bullet points at the top of record 10. The first bullet point – a continuation from the previous page – contains the personal information of a third party and I agree with the Public Body that the interests in severing the information outweigh the interests in disclosure.

[para 37] The second and third bullets contain identifying information that could be severed, and the remainder provided to the Applicants. Once the names of the recipients of the emails are removed, the remaining information is solely about the deceased and serves the purpose of assisting the deceased's family to come to terms with her death.

[para 38] Paragraph number five contains information about the actions of the medical examiner, which the Public Body severed in its entirety. I agree with the Public Body that it must sever the last sentence of this paragraph, as it contains personal information about a third party as an identifiable individual and the interests in disclosure do not outweigh the interests in withholding the information. However, the remaining information in paragraph number five is about the deceased and serves the purpose of assisting the deceased's family to come to terms with her death.

[para 39] The Public Body severed portions of paragraph number six. The severed information includes personal information about a third party and information about the deceased. This paragraph contains the Public Body's reasons for determining that the deceased's death was likely the result of suicide. I agree with the Public Body that it must sever the personally identifying information of a third party; however, once it has done so, it may provide the remaining severed information about the deceased to the Applicants, as this information serves the purpose of assisting the deceased's family members to come to terms with her death.

Records 12 – 13

[para 40] Records 12 and 13 contain a note written by the deceased, containing instructions and wishes for after her death. These records are characterized as a "suicide note" in the disclosed portion of record 10.

[para 41] The Public Body severed the top portion of the note, which contains instructions to a third party. This portion of the record does contain some information about a third party other than the deceased; however, the remainder of the severed portion contains information about the deceased's personal views and wishes and is her personal information.

[para 42] With regard to the portions of the severed information that contain a third party's personal information, I am satisfied that this information can be severed and the remainder provided to the Applicants as it serves the public interest of assisting the Applicants to come to terms with their daughter's death. To be clear, the portion that should be severed is the sentence in the first paragraph that follows the word "state" and ends with a question mark. From the second paragraph, the words that serve to identify third parties other than the deceased can be removed from the second sentence.

[para 43] With regard to the Public Body's severing decisions at the bottom of record 13, I agree that the severed information is the personal information of a third party other than the deceased and that the interests in withholding the information outweigh any interests in disclosure.

Records 14 – 17

[para 44] Records 14 -17 are photographs of the scene. To the extent that there is personal information in these photographs, it is that of the Applicants' deceased daughter. I find that the public interest in providing information to family members to come to terms with their loss applies and weighs strongly in favor of disclosure. I will direct the Public Body to disclose these records to the Applicants.

Records 18 - 19

[para 45] Records 18 and 19 are pictures of websites that were open in the browser of the deceased's cell phone. I find that to the extent that there is personal information in these photographs it reveals only that the deceased viewed them. I find that the public interest in providing information to family members to come to terms with their loss applies and weighs strongly in favor of disclosure. I will direct the Public Body to disclose these records.

Record 20

[para 46] Record 20 is a photograph of texts the deceased sent and received in relation to work. Once the personally identifying information of the recipient of the text is severed, the remaining information can be provided to the Applicants, given that disclosing this information will serve the purpose of allowing the Applicants to learn more information to enable them to come to terms with their daughter's death.

Record 21

[para 47] Record 21 is a photograph of texts sent to a third party by the deceased. I find that this record contains the personal information of a third party and that this information cannot be severed from the record. I find that it would be an unreasonable invasion of the third party's personal privacy to disclose these texts.

Record 22

[para 48] Record 22 is a photograph of texts between the deceased and a business. To the extent that there is personal information in this record, it is that of the deceased. I find that the public interest in providing the deceased's family information to allow them to come to terms with their loss outweighs any interests in withholding the information and I will direct the Public Body to disclose this record.

Records 23 – 26

[para 49] Records 23 – 26 contain notes written by the deceased. These notes contain the personal information of identifiable individuals. In this case, there is no reasonable way to sever the personally identifying information of the individuals from these records, as they would remain identifiable even without identifiers. Moreover, the personal information is “sufficiently sensitive such that it can be said to strike at the biographical core of the individual and, in the broader circumstances, that there is a serious risk that [...] the affected individual will suffer an affront to their dignity” within the framework adopted by the Supreme Court of Canada in *Sherman Estate v. Donovan*, 2021 SCC 25 (CanLII) to assess the sensitivity of personal information – that is, the information contains intimate details about the lives and decisions of other people that they would expect to be kept private and not disseminated.

[para 50] In my view, none of the enumerated factors in section 17(5) appear to apply to records 23 - 26. However, as the Court noted in *Sherman Estate*, there is a public interest in protecting personal information that reveals details of an individual's biographical core from dissemination, as described in the excerpt from that judgement, above. When a public body provides information to a requestor, it is effectively disseminating the information, as it has no control over what a requestor may do with it. The public interest in protecting personal information going to an individual's biographical core is a factor that weighs in favor of withholding personal information and is relevant in this case. I find that the information in records 23 – 26 reveals information regarding the biographical core of third parties, and I find that this factor weighs strongly against disclosure. I will therefore confirm the Public Body's decision to withhold this information from the Applicants.

Record 27

[para 51] Record 27 contains only personal information of the Applicants' deceased daughter. I find that this information provides information that serves the purpose of assisting the Applicants to understand the circumstances surrounding the deceased's death. I will direct the Public Body to disclose this record to the Applicants.

Records 28 –30

[para 52] The Public Body severed the information from records 28 - 30 on the basis that it would be an unreasonable invasion of personal privacy to disclose it. I agree with

the Public Body's decision. The information in this record goes to the biographical core of third parties and I find that this factor weighs strongly in favor of withholding it from the Applicants. I will confirm the decision of the Public Body to sever this information.

Records 31 - 36

[para 53] Record 31 contains a note addressed to a third party. The note contains details about the third party that would serve to identify the third party. However, there is information in this record that could serve the public interest of providing information to bereaved persons to assist them to process the death of a loved one. The title of this record and the metadata, such as the time the record was edited and accessed, should be provided to the Applicants. In addition, the third paragraph from its beginning until the first use of the word "sorry" may be provided to the Applicants. The third paragraph contains the personally identifying information of the deceased. I have considered whether it could be said to contain the personal information of other persons, but I conclude that it contains only the deceased's views and does not reveal information about someone else.

[para 54] The second message on record 33 from the word "thanks" to the word "anymore" could be provided to the Applicants, provided that the personal information of the intended recipient is severed. Disclosing this personal information could assist the Applicants to understand more about the circumstances surrounding their daughter's death.

[para 55] A note at the bottom of record 36 written by the deceased to her employer could also be provided to the Applicants, provided that the name of the intended recipient is removed.

[para 56] With regard to all other information in these records, I find that it contains the personal information of third parties and that the public interest in withholding the information outweighs any interests in disclosing it. Moreover, the information does not serve the public interest in assisting the Applicants to come to terms with their loss. I will confirm the Public Body's decision to sever this information from the records.

Record 37

[para 57] Record 37 is a photograph of the deceased's cell phone. It contains a heading followed by four paragraphs. The information in this record is primarily about the deceased's plans. The third paragraph on this page contains the personal information of an individual other than the deceased.

[para 58] I find that this record contains information about the deceased's mental state that may assist the Applicants to come to terms with their loss. However, I do not find that the third paragraph will serve this purpose. I will therefore direct the Public Body to disclose this record, but for the third paragraph. I will confirm the Public Body's decision to sever the third paragraph.

Records 38 - 46

[para 59] Records 38 – 46 are photographs of the contents of the deceased’s cell phone and contain the personal information of third parties other than the deceased. The information goes to their biographical cores within the terms of *Sherman Estate, supra*. I also find that the personally identifying information cannot be severed reasonably. I find that the public interests in withholding this information outweigh the public interests in disclosing the information and I will confirm the Public Body’s decision to withhold it from the Applicants.

[para 60] I acknowledge that the Applicants will be disappointed not to receive information regarding third parties other than their daughter from the records, given that they specifically requested this information. Where the FOIP Act did not prevent disclosure of information and it served to provide facts or answer some of the Applicants’ questions, I ordered disclosure of the information.

[para 61] I would also like to reiterate that although I have varied the decisions of the Public Body’s FOIP Coordinator, I accept that these were reasonable and compassionate decisions based on the information that was available to the FOIP Coordinator at the time the Public Body’s decisions were made. However, I have the benefit of the Applicants’ affidavit, which establishes that the Applicants have a great need for the facts surrounding their daughter’s death. As discussed above, I believe that section 17 of the FOIP Act accommodates this need and I have therefore varied the Public Body’s decisions.

III. ORDER

[para 62] I make this order under section 72 of the FOIP Act.

[para 63] I require the Public Body to disclose the information to the Applicant that I have specified above. I confirm the decision of the Public Body to sever the remaining information.

[para 64] I require the Public Body to inform me within fifty days of receiving this order that it has complied with it.

Teresa Cunningham
Adjudicator
/kh