



Office of the Information and Privacy Commissioner for Nova Scotia
Report of the Commissioner
Catherine Tully

REVIEW REPORT 19-03

April 24, 2019

Halifax Regional Police

Summary: The applicant sought a copy of a police investigation file in relation to the tragic death of his daughter who was a young adult at the time of her death. Under the access to information rules in the *Municipal Government Act, Part XX*, the Halifax Regional Police are required to withhold third party personal information if disclosure of that information would result in an unreasonable invasion of a third party's personal privacy. The disclosure of personal information compiled as part of a police investigation is presumed to be an unreasonable invasion of personal privacy. In this case, some personal information related specifically to the applicant's daughter can be released because several factors outweigh this presumption. Most importantly, compassion for the applicant weighs in favour of disclosure of some of his daughter's personal information. However, disclosure of information relating to the identity of the witnesses would result in an unreasonable invasion of the witnesses' personal privacy. The Commissioner recommends that Halifax Regional Police release a small portion of the witness statement summaries that relate only to the activities of the applicant's daughter on the evening of her death and that would not allow the witnesses to be identified.

Statutes Considered: *Access to Information and Protection of Privacy Act*, [SNL 2002, c A-1.1](#), s. 45; *Municipal Government Act*, [SNS 1998 c 18](#), ss. 480, 498.

Authorities Considered: **British Columbia:** Order 01-19, [2001 CanLII 21573 \(BC IPC\)](#); **Nova Scotia:** Review Reports FI-10-19, [2015 CanLII 54095 \(NS FOIPOP\)](#); 16-03, [2016 NSOIPC 3 \(CanLII\)](#); 16-04, [2016 NSOIPC 4 \(CanLII\)](#); 16-08, [2016 NSOIPC 8 \(CanLII\)](#); 17-04, [2017 NSOIPC 4 \(CanLII\)](#).

Cases Considered: *House (Re)*, [2000 CanLII 20401 \(NS SC\)](#); *Nova Scotia (Public Prosecution Service) v. FitzGerald Estate*, [2015 NSCA 38 \(CanLII\)](#).

Other Sources Considered: *Concise Oxford English Dictionary*, (New York: Oxford University Press, 2011), "unfair".

INTRODUCTION:

[1] The applicant sought a copy of a police investigation file in relation to the tragic death of his daughter who was a young adult at the time of her death. In response to the request, the Halifax Regional Police (HRP) initially provided partial access to 40 pages of a 107-page document. Two CD's were also withheld. One CD contains the audio of witness interviews, the other contains 147 photographs. During the informal resolution process with this office, HRP revised its approach and released all 107 pages of records, some with partial severing. HRP continued to withhold the two CDs in full. HRP advised the applicant that the information was withheld in order to protect the personal information of third parties.

ISSUE:

[2] Is HRP required by s. 480 of the *Municipal Government Act, Part XX (MGA)* to refuse access to the record or any part thereof because disclosure of the information would be an unreasonable invasion of a third party's personal privacy?

DISCUSSION:

Background

[3] The record at issue is the police investigation file. The investigation did not lead to any charges being laid. Ultimately, the police concluded that the death was accidental. The paper file consists of 107 pages of reports printed out of HRP's file management system. In total, there are 14 types of reports contained in the file. In addition, one CD contains eight witness statements (audio) and another CD contains 147 photographs.

[4] During the investigation into the applicant's daughter's death, HRP officials met at least five times with the applicant in an attempt to answer his questions. Based on this approach, it appears that HRP was of the view that, as the father of the deceased, the applicant was entitled to some personal information of the deceased found in the HRP investigation file. Notes from the meetings are contained in the investigation file and they indicate that the applicant was provided with a significant amount of detail regarding the events that led to his daughter's death, but he was not provided with the names of witnesses, nor with copies of the witness statements.

[5] The applicant and his wife have suffered very deeply from the death of their only child. They eloquently express their sorrow and bewilderment at her loss. Through this access to information request, they sought as much information as possible, particularly regarding the events that occurred on the evening before her death.

Burden of Proof

[6] Usually it is the municipal body who bears the burden of proving that the applicant has no right of access to a record. However, where the information being withheld is the personal information of people other than the applicant (s. 480), the applicant bears the burden of proof.¹

¹ *MGA*, [SNS 1998 c 18](#), s. 498(3)(a).

Is HRP required by s. 480 of the MGA to refuse access to the record or any part thereof because disclosure of the information would be an unreasonable invasion of a third party's personal privacy?

[7] It is well established law in Nova Scotia that the proper application of the third party personal privacy exemption requires a four-step analysis as follows:²

- i. Is the requested information “personal information” within the meaning of s. 461(f)? If not, that is the end. Otherwise, I must go on.
- ii. Are any of the conditions of s. 480(4) satisfied? If so, that is the end.
- iii. Is the personal information presumed to be an unreasonable invasion of privacy pursuant to s. 480(3)?
- iv. In light of any s. 480(3) presumption, and in light of the burden upon the applicant established by s. 498(2), does the balancing of all relevant circumstances, including those listed in s. 480(2), lead to the conclusion that disclosure would constitute an unreasonable invasion of privacy or not?

[8] HRP notes in its submissions that the applicant is not acting on behalf of his deceased daughter and so must be treated as a third party. This is a reference to s. 496(a) of the MGA which provides that where the individual is deceased, any right or power conferred on an individual may be exercised by the administrator of the individual's estate. There is no evidence that the deceased's father is the administrator of his daughter's estate. This means that the test in s. 480 must be applied to all third party personal information, including the personal information of the applicant's daughter.

i. Is the requested information “personal information” within the meaning of s. 461(f)?

[9] In its initial response, HRP wholly withheld numerous pages that contained extensive information that did not qualify as third party personal information such as:

- Document types (headings)
- Subheadings contained on some forms
- Identity and business addresses of service providers such as ambulance, fire department, etc.
- Information about investigative tasks, including dates and timing
- Information about the applicant

[10] The new response provided during informal resolution is a significant improvement and, for the most part, HRP has only withheld information that qualifies as third party personal information that falls into the following categories.

Names, home addresses, dates of birth of third parties

[11] Witnesses, other individuals in a business capacity and police officers are all identified by name. Some individuals (generally witnesses) also provided home addresses and dates of birth. All of this information is personal information of third parties. HRP disclosed the names of police officers and others who are identified strictly in a business capacity. HRP withheld the

² *House (Re)*, [2000 CanLII 20401 \(NS SC\)](#), at para 14.

names and identifying information of witnesses as well as employee numbers assigned to police officers.

Witness statements

[12] The witness statements appear in two parts of the record. First, the full witness statements are contained on the CD. Secondly, there are summaries of each witness statement found in the paper record. The witness statements include names of the witnesses and names of other individuals present. This is obviously personal information. A witness's statements about what she or he did – or when or how – are the personal information of that witness, even though they are factual observations. But not all information in witness statements constitutes personal information. Factual observation of witnesses such as the recounting of a witness's observations of an accident, does not qualify as the personal information of that witness.³ In the recounting, the witness may include an opinion about the character of another individual or may provide information that reveals lifestyle choices or interests of another individual that could qualify as third party personal information. Further, if the content of the witness statement identifies the witness (even if the name of the witness is removed), this constitutes personal information of the witness.

Information related to the deceased

[13] It is well established that the right to privacy does not end with our deaths. As time passes, the right to privacy diminishes, although in this case insufficient time has passed for there to be any significant diminution of the deceased's right to privacy.⁴ The identity of the deceased is her personal information. Opinions about the deceased and descriptions of her activities that reflect on her judgement are also her personal information. In addition, there are some photographs which qualify as her personal information. Information about the autopsy results and about items seized by the police from the deceased would also qualify as the personal information of the deceased.

Medical information

[14] There is some medical information about third parties, which, to the extent the information can be associated with an identifiable individual, is third party personal information.

Photographs

[15] One of the challenges of this request is that there were a small group of individuals who occupied the home. Photographs of the interior of the home where the death occurred contain clues to the identity of each of the individual occupants – books, photographs, posters and some medications are obvious in the photos. Further, the images provide information about the lifestyle, interests and activities of the occupants. This is personal information to the extent that it can be associated with identifiable individuals. Similar information can be gleaned about the

³ As I previously stated in NS Review Report FI-10-19, [2015 CanLII 54095 \(NS FOIPOP\)](#), at para 21 – consistent with the decision of former BC Commissioner Loukidelis in BC Order 01-19, [2001 CanLII 21573 \(BC IPC\)](#), at para 25.

⁴ For a more detailed discussion about the right to privacy following death see NS Review Report 16-03, [2016 NSOIPC 3 \(CanLII\)](#), NS Review Report 16-08, [2016 NSOIPC 8 \(CanLII\)](#), and NS Review Report 17-04, [2017 NSOIPC 4 \(CanLII\)](#)

deceased from the photographs of the interior of her apartment. This is the personal information of the deceased.

Audio recordings

[16] The audio recordings of witness statements are the personal information of third parties. Not only are the third parties identified by name during the recording, the content of the statements provides further clues to their identities and the voice of each individual is unique and constitutes personal information.

ii. Are any of the conditions of s. 480(4) satisfied? If so, that is the end.

[17] Section 480(4) provides a list of conditions that, if satisfied, means that the information cannot be withheld under s. 480. In this case, one of those provisions applies. Section 480(4)(e) provides that disclosure of information about the third party's position, functions or remuneration as an officer, employee or member of a municipality is not an unreasonable invasion of personal privacy. Therefore, the names of any HRP employees cannot be withheld under s. 480. HRP properly applied s. 480(4)(e) to the identity of HRP employees and, since no other exemption applied, released this information.

[18] None of the remaining withheld personal information falls within s. 480(4) and so I must go on with the analysis with respect to that information.

iii. Is the personal information presumed to be an unreasonable invasion of privacy pursuant to s. 480(3)?

[19] HRP submits that the presumption in s. 480(3)(b) applies to the withheld personal information. Section 480(3)(b) states that there is a presumed unreasonable invasion of third party personal privacy if the personal information was compiled and is identifiable as part of an investigation into a possible violation of law. The applicant agrees that the presumption in s. 480(3)(b) applies in this case but argues that the presumption is outweighed by a number of factors discussed below.

[20] I agree with the parties that the presumption in s. 480(3)(b) applies to the personal information contained in the responsive records. The presumption, of course, does not apply, nor does s. 480 apply, to non-personal information.

iv. In light of any s. 480(3) presumption, and in light of the burden upon the applicant established by s. 498(2), does the balancing of all relevant circumstances, including those listed in s. 480(2), lead to the conclusion that disclosure would constitute an unreasonable invasion of privacy or not?

[21] In its submissions, HRP states, "...there is no mechanism in the FOIPOP scheme to balance and weigh privacy interests against competing disclosure requirements." In fact, s. 480(1) and (2) set out the exact mechanism by which municipalities must weigh the privacy interests of third parties against other relevant circumstances which can include other disclosure requirements.

[22] The test is not whether the information is third party personal information; the test is whether the disclosure of the third party personal information would result in an "unreasonable

invasion of third party personal privacy.” To determine whether the disclosure meets that test, the law provides that the considerations set out in s. 480(2) and any other relevant circumstances must be weighed. Some circumstances may support a finding of unreasonable invasion of personal privacy, but other circumstances may support disclosure of the third party personal information.

[23] There are seven considerations relevant to determining whether or not the disclosure of third party personal information would result in an unreasonable invasion of third party personal privacy in this case:

- i. Knowledge of the applicant
- ii. Personal information supplied in confidence
- iii. Fair determination of the applicant’s rights
- iv. Unfair damage to reputation of any person
- v. Third party exposed unfairly to harm
- vi. Sensitivity of the information
- vii. Compassion for the applicant

Knowledge of the applicant

[24] As I noted earlier, HRP met at least five times with the applicant while the investigation was ongoing. During those meetings HRP officials provided the applicant with information about his daughter and the circumstances of her death. HRP officials created records summarizing the information disclosed in those meetings and those records were disclosed to the applicant in the revised release from HRP. The disclosed records reveal that the applicant was provided with details of his daughter’s activities on the evening of her death and the records also indicate that witness statement summaries were read to the applicant. The meeting notes also clearly indicate that the applicant was not provided with the identity of the witnesses. The knowledge of the applicant weighs in favour of disclosure of information already disclosed to the applicant during those meetings.

Personal information supplied in confidence (s. 480(2)(f))

[25] The third party personal information at issue in this case was all collected as part of a police investigation. At the time that the witnesses provided their personal information, they understood that the police investigation was the sole purpose for providing the information. HRP has not made any arguments about relevant considerations and has not argued that the information was supplied or received in confidence. However, as part of the processing of this request, HRP sought consent of the witnesses to the disclosure of their personal information. No witness consented, and several witnesses indicated that they believed the personal information they provided was confidential.

[26] The applicant argues that there is no evidence to suggest that any of the information in question was supplied to HRP in confidence. He states that since the information was gathered in the course of a police investigation, if criminal charges had been laid, the information gathered would then have become a matter of public record at the trial of those charges. On that basis, the applicant claims that the information was not supplied in confidence.

[27] The Nova Scotia Court of Appeal in *Nova Scotia (Public Prosecution Service) v. FitzGerald Estate* considered the application of the third party personal privacy rules to witness statements.⁵ In that case, the motions judge determined that witness statements could not have been given with an expectation of confidence since the evidence was the subject matter of a public process. The Court of Appeal determined that the motions judge erred in this finding, noting instead that “after the criminal investigation and prosecution ends, the third party is entitled presumptively to the comfort that public access to his or her personal information is over”.⁶ The Court of Appeal goes on to note that the third parties provided information to police for the limited purposes of the prosecution in that case and concludes that “the judge’s presumed characterization of the witnesses’ perpetual and unfettered waiver of a privacy expectation is not the law.”⁷

[28] No charges were ever laid in this case and the police investigation file is now closed. Consistent with the Court of Appeal’s determination in *Fitzgerald* and based on the responses from the witnesses in this case, I find that the personal information of the witnesses was supplied in confidence.

[29] This factor weighs against the disclosure of the personal information of the witnesses who provided witness statements.

[30] It is important to recall that not everything in a witness statement qualifies as the personal information of the witness. The witnesses’ names and any identifying information qualify as third party personal information. Factual observations or opinions about other individuals do not qualify as the witnesses’ personal information.

Fair determination of the applicant’s rights (s. 480(2)(c))

[31] The applicant has commenced civil litigation regarding his child’s death. The applicant provided a copy of the pleadings in the litigation which involves a claim of negligence against a number of named parties. He says that HRP’s findings are highly relevant to this litigation. He points to s. 480(2)(c) which provides that one relevant circumstance is that the personal information is relevant to a fair determination of the applicant’s rights.

[32] In Review Report FI-10-19⁸ I noted that the *Freedom of Information and Protection of Privacy Act (FOIPOP)* equivalent to s. 480(2)(c) will apply only where *all* the following circumstances are met:

- i. The right in question must be a legal right drawn from the common law or a statute, as opposed to a non-legal right based only on moral or ethical grounds;
- ii. The right must be related to a proceeding which is either underway or is contemplated, not a proceeding that has already been completed;

⁵ *Nova Scotia (Public Prosecution Service) v. FitzGerald Estate*, [2015 NSCA 38 \(CanLII\)](#) [*Fitzgerald*].

⁶ *Fitzgerald* at para 90.

⁷ *Fitzgerald* at para 91.

⁸ NS Review Report FI-10-19, [2015 CanLII 54095 \(NS FOIPOP\)](#), at para 36.

- iii. The personal information sought by the applicant must have some bearing on, or significance for, determination of the right in question; and
- iv. The personal information must be necessary in order to prepare for the proceeding or to ensure a fair hearing.

[33] I am satisfied that the first three requirements have been met in this case. It is the fourth requirement that is something of a challenge. HRP argues that the information in the HRP file would be better sought using an “O’Connor application” which HRP describes as the process for the production of third party records. HRP says that it regularly receives production orders from judges and that it regularly complies with such orders. HRP is of the view that this is the better approach to take in this case.

[34] As the applicant is involved in a civil proceeding, it appears that the process by which third party production may be ordered is in fact Civil Procedure Rule 14.12. An “O’Connor application” is a process used in criminal cases.

[35] In more modern access to information laws, the fact that another process is available to access to a record is a relevant consideration and can form the basis for the information and privacy commissioner to refuse to hear an appeal.⁹ Nova Scotia’s access law does not have a similar provision. Further, given that s. 480(2)(c) appears to contemplate that the access rules can be used as a means of gathering information as part of a civil action, it cannot be said that just because another process exists for obtaining information, the *MGA* access rules should be unavailable to an applicant.

[36] As noted above, the first three parts of the s. 480(2)(c) test have been met. The fourth element required is that the personal information must be necessary in order to prepare for the proceeding or to ensure a fair hearing. I would think that in a lawsuit aimed at determining whether someone was at fault in an individual’s death, the police investigation into the death would be highly relevant. The fact that it is an investigation conducted immediately following the death and that it includes statements of witnesses and photographs of the scene would be essential to a civil court’s considerations. On balance, I find that s. 480(2)(c) applies in this case and weighs in favour of disclosure of third party personal information.

Unfair damage to the reputation of any person (s. 480(2)(h))

Third party will be exposed unfairly to financial or other harm (s. 480(2)(e))

[37] The applicant says that these two factors militate in favour of the disclosure of the information. First, he says that no one will be unfairly exposed to harm because when used in civil litigation, the defendants will be given every opportunity to explain or discuss the information during discoveries. Further, once this information is disclosed as part of the civil litigation process, it will become subject to the implied undertaking rule which means that the

⁹ See for example s. 45(1)(b) of Newfoundland’s *Access to Information and Protection of Privacy Act*, [SNL 2002, c A-1.1](#).

records will have to be held in confidence and not used for any purpose unconnected to the litigation.

[38] Another way of looking at these factors is that, using the personal information contained in the withheld documents, the applicant might succeed in his civil litigation. From the third parties' perspective then, the information could be used to expose them to financial harm in the form of a damage award and could potentially also harm their reputation if they were found to be in some way at fault. To be clear, I'm not saying anything about the potential content of the records, only commenting on the potential effect of a successful civil litigation.

[39] Would it be "unfair" damage or "unfair" harm to release the third party personal information so that the applicant can use the information in his civil litigation that includes some of the third parties identified in the withheld records?

[40] In Review Report 16-04¹⁰ I considered the meaning of "unfair". I noted that the Concise Oxford English Dictionary¹¹ defines "unfair" as "not based on or showing fairness; unjust, contrary to the rules of the game." I have already determined that with respect to the identity of the witnesses, that information was supplied in confidence. In Review Report 16-04 I determined that the disclosure of third party personal information collected as part of a confidential workplace investigation would be "contrary to the rules of the game." On that basis, I said that any harm arising from the disclosure would be "unfair". The same applies in this case. I find that disclosure would be "contrary to the rules of the game" because it was supplied in confidence by witnesses who understood the purpose to be limited to the police investigation. These two factors weigh heavily against the disclosure of the personal information of the witnesses.

Sensitivity of the information

[41] The withheld personal information was all collected as part of an investigation into the death of a young person. In that context, some of the information collected is sensitive. Medical information and photographs of the scene are two examples of sensitive personal information. This factor weighs against disclosure of information that falls within this category.

Compassion for the applicant

[42] In general, an applicant's motives are not relevant in the sense that applicants do not have to explain or justify their reasons for seeking information. However, that is not to say that motives cannot be relied upon to support a request. In many decisions across other jurisdictions, motive or compassion is considered when weighing access requests made by bereaved family members.¹²

¹⁰ NS Review Report 16-04, [2016 NSOIPC 4 \(CanLII\)](#), at para 28.

¹¹ *Concise Oxford English Dictionary*, (New York: Oxford University Press, 2011), "unfair" at p. 1576.

¹² As discussed in NS Review Report 16-08, [2016 NSOIPC 8 \(CanLII\)](#), beginning at para 29.

[43] Compassion has two core considerations:

- i. Are there any indications of what the deceased would have wanted?
It is relevant to consider the nature of the relationship between the applicant and the deceased and to also consider the knowledge of the applicant with respect to the deceased's personal information. A lack of awareness weighs against disclosure while existing knowledge of the requested information weighs in favour of disclosure.
- ii. What are the needs of the grieving relatives?
The deceased's family is in the best position to determine the therapeutic value of any personal information received.

[44] For bereaved adults and children alike, understanding the full details and circumstances surrounding a loved one's death is an integral part of the grieving process. Greater knowledge of the circumstances of a loved one's death is, by its very nature, compassionate.

[45] I have no evidence before me regarding the relationship between the deceased and her parents. She was their only child and without question she was dearly loved by her parents. But she was a young woman living away from home, on her own. The circumstances leading to her death came as a surprise to her family. This suggests that she may have been experimenting with new activities, as we all do in our youth. Young adulthood is usually characterized by a wish for independence and freedom from parental oversight. I do not know if this was the situation here.

[46] As noted above, the records reveal that HRP met at least five times with the applicant and provided him with some details regarding the death of his daughter. The applicant has not specifically argued that compassion weighs in favour of disclosure but has instead focused on the need for the information in order to pursue civil litigation.

[47] On balance, I find that this factor favours disclosure of information about the applicant's daughter in particular.

Conclusions

Witness identity in witness statement summaries and audio recordings

[48] With respect to the identity of witnesses, I find that the balance of factors above weighs against disclosure of names, addresses, dates of birth and any information in the witness statement summaries that would serve to identify witnesses. Given the small number of witnesses, for the most part this will mean little if any of the witness statement summaries can be disclosed. With respect to the audio recordings, the voices of the witnesses serve to identify who each witness is. There is no way to sever an audio recording since the voices themselves render the statements identifiable. Factors that weigh against disclosure are the presumption in s. 480(3)(b), the fact that the information was supplied in confidence and the fact that the third party witnesses could potentially be exposed to harm or damage to their reputations. The applicant has failed to satisfy his burden of proof with respect to any information that could identify a witness. I find that s. 480 applies to the identity of the witnesses and all identifying information, including all of the audio recordings.

Deceased's personal information

[49] The records contain three general types of personal information about the deceased. My assessment of the application of s. 480 to each of these three types is set out below.

Activities on the evening of her death

[50] There are portions of each of the witness statement summaries that provide factual descriptions of the activities of the deceased on the evening of her death. These facts were provided to the applicant in meetings with HRP as evidenced by the summaries of these meetings contained in the HRP file. The presumption in s. 480(3)(b) weighs against disclosure but the presumption is outweighed by three significant factors: the knowledge of the applicant, the fact that the information is only about the applicant's daughter, and the fact that this information does not identify the witnesses. It is also important to note that withholding the information in the witness statement summaries is not consistent with disclosure of very similar if not identical information elsewhere in the package. I find that s. 480 does not apply to the factual information about the activities of the deceased on the evening of her death found in each of the witness statement summaries. I will provide HRP with a recommended severing of the witness statement summaries found at pages 10, 21-24, 50-51, 53-57.

Mental state of deceased at the time of her death

[51] One of the witness statement summaries provides some information regarding the potential mental state of the deceased at the time of her death. The information does not reveal the identity of the witness, but it is sensitive information about the deceased. This is however, precisely the type of information that a grieving parent would want to know. Compassion weighs heavily in favour of disclosure of this information. I find that s. 480 does not apply to a brief description about the potential mental state of the deceased found on page 42. I will provide HRP with a recommended severing of the witness statement summary found on page 42.

Photographs, medical information, items seized by police

[52] The following types of information relating to the applicant's daughter require special consideration: some photographs, some medical information including information from the autopsy, information that reflects on her judgement and choices, and items seized by the police. In my opinion, this set of information is the most sensitive personal information of the deceased and does not, for the most part, specifically assist in understanding the events leading to her death. As such, compassion does not, in my view, outweigh the other factors including the presumption in s. 480(3)(b). I find that the balance of the factors above weighs against the disclosure of this set of information.

Photographs generally

[53] I noted initially that information contained in the photographs taken by the police reveals personal information of the occupants of the apartment. The photos reveal something of the character of the individual occupants, including artistic choices, cleanliness and other lifestyle choices. Given the small number of occupants, on balance of probabilities, I believe it is possible to identify the occupants of each room and to make judgements about those occupants. Even photographs of the common area could result in the disclosure of personal information of the occupants and could potentially cause reputational harm. The applicant has failed to satisfy

his burden of proof with respect the photographs. I find that s. 480 applies to all of the photographs.

Police officer employee numbers

[54] HRP has withheld all of the identification numbers assigned to individual police officers that appear on most of the records. HRP states that these numbers are employee numbers, not badge numbers. In a follow up submission, HRP says, "...these numbers are employee numbers which are associated with Blue Cross and Halifax Regional Police computer systems." A further email submission provided some additional detail on how the combination of the police officer's name (disclosed in this case) along with the employee number could be used to gain access to confidential personal and police information.

[55] It is the applicant who bears the burden of proving that disclosure of personal information compiled and identifiable as part of an investigation into a possible violation of law would not be an unreasonable invasion of a third party's personal privacy. The applicant has only indicated an interest in obtaining the employee numbers but has provided no argument or evidence as to why disclosure of these numbers would not be an unreasonable invasion of a third party's personal privacy.

[56] Only one of the relevant considerations listed above appears to apply to police officer employee numbers – sensitivity of the information. While the evidence is not very compelling that the employee numbers are sensitive, the employee numbers are subject to the presumption in s. 480(3)(b) and the applicant has not provided any argument or evidence that would allow me to find that the presumption has been outweighed with respect to this information.

[57] I find that the balance of factors weighs against the disclosure of police officer employee numbers in this case.

Non-personal information

[58] In preparing the revised response, it appears that on several occasions the HRP's severing software may have resulted in over-severing. This occurred on pages 1-6 and 60. This appears to be an error since it is inconsistent with similar information disclosed within the package. Further, on page 16, once the identity of the witnesses is removed, the remaining information is no longer personally identifiable and so cannot be withheld under s. 480. I find that s. 480 does not apply to non-personal information found on pages 1-6, 16 and 60. I will provide HRP with recommended severing for these pages.

FINDINGS & RECOMMENDATIONS:

[59] I find that:

1. Section 480 applies to the identity of the witnesses, all identifying information including all of the audio recordings, all of the photographs and police officer employee numbers.
2. Section 480 does not apply to factual information about the activities of the deceased on the evening of her death found in each of the witness statement summaries at pages 10, 21-24, 50-51 and 53-57.

3. Section 480 does not apply to a brief description of the mental state of the deceased found on page 42.
4. Section 480 does not apply to a small portion of non-personal information severed on pages 1-6, 16 and 60.

[60] I recommend that HRP:

1. Release limited personal information of the deceased found on pages 10, 21-24, 42, 50-51 and 53-57. I will provide HRP with the recommended severing for these pages.
2. Release non-personal information on pages 1-6, 16 and 60. I will provide HRP with the recommended severing for these pages.
3. Continue to withhold all of the remaining personal information of third parties and the deceased.

April 24, 2019

Catherine Tully
Information and Privacy Commissioner for Nova Scotia