



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER M-240

Appeal M-9200163

Metropolitan Toronto Police Services Board



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ORDER

BACKGROUND:

The Metropolitan Toronto Police Services Board (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to:

1. the record compiled in the investigation of the death of [the requesters' son]; and
2. the record of the autopsy performed on [the requesters' son], on or about June 21, 1988; and
3. all negatives exposed at and copies of all photographs developed of the autopsy of [the requesters' son].

The Police granted partial access to the requested information. The Police disclosed a press release pertaining to the investigation of the death, a blank page from a bail verification form, a press release pertaining to the availability of a restricted drug, and an abstract of an article from a journal. Access was denied to the remainder of the records pursuant to sections 8(1)(a), 8(1)(b), 8(1)(h), 8(1)(l), 8(2)(a), 8(2)(c), 9(1)(d), 12, 14, 15(a) and 38(b) of the Act, and because some records contained information which is not responsive to the request.

The requesters appealed the denial of access to the records, and indicated that they believe that additional records responsive to their request exist.

During mediation, the appellants indicated that the information contained in the records does not relate to the administration of the estate. Therefore, the appellants stated that they are not seeking access to the personal information as a representative of the deceased under section 54(a) of the Act.

The appellants indicate that they had previously obtained the following four records, and consequently, these records are not at issue in this appeal:

- (a) Recommendations of the Jury (Records 10 and 11, duplicate Records 118 and 119);
- (b) Verdict of Coroner's Jury (Records 13, 14 and 15, duplicate Records 115, 116 and 117);
- (c) Forensic Science Report (Record 20, duplicate Records 74 and 376);
- (d) Post Mortem Examination (Records 75, 76, 78, 79 and 80).

The appeal was not resolved by mediation, and notice that an inquiry was being conducted to review the decision of the Police was sent to the appellants and the Police. Written representations were received only
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from the Police.

While the representations were being considered, Commissioner Tom Wright issued Order M-170, adopting the Ontario Court (General Division) (Divisional Court) decision in the case of John Doe v. Ontario (Information and Privacy Commissioner) (1993), 13 O.R. (3d) 767. This decision interpreted several provisions of the Act in a way which differed from the interpretation developed in orders of the Commissioner. Since similar statutory provisions were also at issue in the present appeal, it was determined that copies of Order M-170 should be provided to the parties, and the appellant and the Police were provided with the opportunity to change or to supplement the representations previously submitted. No additional representations were received.

PRELIMINARY ISSUES:

In their representations, the Police withdrew the exemptions claimed under sections 8(2)(a) and 12 of the Act. Accordingly, these exemptions will not be considered.

The representations of the Police do not make reference to section 8(2)(c) of the Act. Section 8(2)(c) is a discretionary exemption and I will not consider it in the absence of representations to support its application.

The Police claim that Records 138-140, 144-146, 219-221, 224, 227, 233, 247, 259, 261, 266, 268, 270, 272, 286-288, 291, 311, 313, 321, 339, 342, 364, 370-371, 375 and 381 are not responsive to the request. These records consist of photocopies of file covers, notes relating to police promotional procedures, and Court Notification & Statement Requests relating to an individual other than the deceased. I have reviewed these records and, in my view, they are not responsive to the request.

The Police claimed section 8(1)(l) of the Act to exempt parts of Records 241, 242, 243 and 246. The information severed pursuant to this section consists of "10 code" entries in police officers' notebooks relating to police availability for communication. I have reviewed the information and, in my view, it is not responsive to the appellant's request. Accordingly, it is not necessary for me to consider section 8(1)(l) of the Act.

The records remaining at issue and the exemptions claimed for each are identified in Appendix "A" to this order.

ISSUES:

- A. Whether the records contain "personal information" as defined in section 2(1) of the Act.
- B. If the answer to Issue A is yes, and the personal information relates to individuals other than the appellants, whether the mandatory exemption provided by section 14 of the Act applies.

- C. Whether the discretionary exemption provided by section 15(a) of the Act applies.
- D. Whether the mandatory exemption provided by section 9 of the Act applies.
- E. Whether the discretionary exemptions provided by sections 8(1)(a), (b) and (h) of the Act apply.
- F. If the answer to Issue A is yes, and the personal information relates to the appellants and other individuals, whether the discretionary exemption provided by section 38(b) of the Act applies.
- G. Whether the Police have conducted a reasonable search for responsive records.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the records contain "personal information" as defined in section 2(1) of the Act.

Section 2(1) of the Act states, in part:

"personal information" means recorded information about an identifiable individual, ...

Section 2(2) of the Act states:

Personal information does not include information about an individual who has been dead for more than thirty years.

In my view, with the exception of Record 402, all of the information contained in the records qualifies as personal information under section 2(1) of the Act, and relates to identifiable individuals, including the appellants' son who is deceased. Section 2(2) does not apply as the death occurred within the past thirty years.

Records 1 (duplicated on Records 273, 274 and 275), 30, 41 and 42 (duplicated on Records 180 and 181), 334, 335 and 396 contain the names, address and/or telephone number of the appellants under the headings "next of kin" and "in case of emergency notify". Two of the records contain a single reference to the appellants as parents of the deceased individual. In my view, these records contain the personal information of both the appellants and other identifiable individuals.

ISSUE B: If the answer to Issue A is yes, and the personal information relates to individuals other than the appellants, whether the mandatory exemption provided by section 14 of the Act applies.

In Issue A, I found that, with the exception of Records 1, 30, 41, 42, 180, 181, 273-275, 334, 335, 396 and 402, all of the records contain the personal information of identifiable individuals other than the appellants, including the appellants' son who is deceased.

Section 14(1) of the Act prohibits the disclosure of personal information to any person other than to the individual to whom the information relates, except in certain circumstances listed under the section. In my view, the only exception to the section 14(1) mandatory exemption which has potential application in the circumstances of this appeal is section 14(1)(f), which reads as follows:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

if the disclosure does not constitute an unjustified invasion of personal privacy.

Section 14(1)(f) is an exception to the mandatory exemption which prohibits the disclosure of personal information. In order to establish that section 14(1)(f) applies, it must be shown that disclosure of the personal information at issue in this appeal would **not** constitute an unjustified invasion of personal privacy.

Section 14(3) lists specific types of personal information, the disclosure of which is presumed to constitute an unjustified invasion of personal privacy. The Police have raised the application of sections 14(3)(a), (b) and (d) of the Act. The only way in which a section 14(3) presumption can be overcome is if the personal information at issue falls under section 14(4) of the Act or where a finding is made under section 16 of the Act that a compelling public interest exists in the disclosure of the record in which the personal information is contained, which clearly outweighs the purpose of the section 14 exemption (Order M-170).

In the circumstances of this appeal, the representations I have been provided with weigh in favour of finding that disclosure of the personal information at issue in this appeal would constitute an unjustified invasion of personal privacy. Having found that the records contain information which qualifies as personal information of individuals other than the appellants, and in the absence of any representations weighing in favour of finding that disclosure of the personal information would **not** constitute an unjustified invasion of personal privacy, I find that the exception contained in section 14(1)(f) does not apply, and the personal information of individuals other than the appellants is properly exempt from disclosure under section 14(1) of the Act.

The Police claim section 15(a) of the Act applies to Records 109, 112, 217, 218, 271, 331 and 332, and section 9(1) applies to Records 26, 222 and 223. However, since I have found that these records are exempt from disclosure under section 14 of the Act it is not necessary to consider Issues C and D.

**ISSUE E: Whether the discretionary exemptions provided by sections 8(1)(a), (b) and (h) of
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the Act apply.

The Police did not make representations in support of its application of sections 8(1)(a), (b) and (h), other than to state that "At the time of this request, a complaint ... was still undergoing review at the office of the Public Complaints Commissioner".

The exemptions set out in section 8(1) of the Act require that there exist a reasonable expectation of probable harm. The mere possibility of harm is not sufficient. At a minimum, the Police must establish a clear and direct linkage between the disclosure of the information and the harm alleged (Order M-199). In my view, the representations provided by the Police are not sufficient to establish the application of sections 8(1)(a), (b) or (h).

ISSUE F: If the answer to Issue A is yes, and the personal information relates to the appellants and other individuals, whether the discretionary exemption provided by section 38(b) of the Act applies.

In Issue A, I found that Records 1, 30, 41, 42, 180, 181, 273-275, 334, 335 and 396 contain the personal information of the appellants and other identifiable individuals.

Section 36(1) of the Act gives individuals a general right of access to any personal information about themselves in the custody or under the control of an institution. However, this right to access is not absolute. Section 38 provides a number of exemptions to this general right of access. One such exemption is found in section 38(b) which reads:

A head may refuse to disclose to the individual to whom the information relates personal information,

if the disclosure would constitute an unjustified invasion of another individual's personal privacy;

Section 38(b) introduces a balancing principle. The Police must look at the information and weigh the requester's right of access to his/her own personal information against another individual's right to the protection of his/her personal privacy. If the Police determine that release of the information would constitute an unjustified invasion of the other individual's personal privacy, section 38(b) gives the Police the discretion to deny access to the personal information of the requester.

The records contain the names, address and/or telephone number of the appellants under the headings "next of kin" and "in case of emergency notify". Two of the records contain a single reference to the appellants as parents of the deceased individual. Records 334 and 335 contain a message from one Police service to

another concerning the appellants and their son.

In weighing the access rights of the appellants with the privacy rights of the deceased, I find that Records 1, 30, 41, 42, 180, 181, 273-275 and 396 relate primarily to the deceased individual and, in my view, disclosure of these records would constitute an unjustified invasion of his personal privacy. Records 334 and 335 contain information which relates primarily to the appellants and, in my view, disclosure of the information in these records would not constitute an unjustified invasion of privacy of the deceased individual. Accordingly, I find that section 38(b) of the Act does not apply to exempt these two records from disclosure.

ISSUE G: Whether the Police have conducted a reasonable search for responsive records.

The appellants claim that more than one roll of film of the autopsy exists, and also that there is a record of autopsy.

In their representations, the Police describe the steps taken to locate responsive records, and the extent of the search. The personnel responsible for actual searches for records and for photographs include a Detective in the Homicide Squad, a Staff Inspector in the Public Complaints Investigation Bureau (PCIB), an employee in the Public Complaints Commissioner's offices (PCC), and the Coroner's Constable. The results of the searches indicate that there are no records at the PCIB, there are photocopies of Police files but no original records at the PCC, there are records but no photographs in the Homicide Squad, and the only photographs in the inquest file are of the Dundas Street West scene where the deceased was arrested.

The Forensic Identification Services was contacted and it reported that it only has negatives of the scene on Dundas Street West and one roll of negatives of the autopsy (Records 405 and 406). They found no other rolls of film or photographs.

I have reviewed the representations of the Police, and in my view, several thorough searches were conducted for responsive records, including autopsy photographs and a record of autopsy. I am therefore satisfied that the search conducted by the Police for the record of autopsy and further autopsy photographs was reasonable in the circumstances of this appeal.

ORDER:

1. I order the Police to disclose Records 334, 335 and 402 to the appellants within 20 days of the date of this order.
2. I uphold the decision of the Police to deny access to the records pursuant to section 14 of the Act.
3. In order to verify compliance with the provisions of this order, I order the Police to provide me with

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a copy of the records which are disclosed to the appellants pursuant to Provision 1, **only** upon request.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

_____ December 14, 1993

APPENDIX "A"

RECORD	DESCRIPTION
1-8	Sudden Death Reports, Weapons Dangerous Report, Crimestoppers Report
9	Property Occurrence - General
12	Report of Inquest
16	File box label
18-19	Internal correspondence
21	Record of Inquest: Cover Sheet
22-24	Index of Inquest Records
25	Photo of deceased
26	RCMP Identification
27-28	Witness list
29	List of exhibits
30-35	Synopsis of Inquest evidence
36-40	Statements of Police Constable and 2 Doctors
41-72	Medical Records
73	Statement of Toxicological Analyst
77	Statement of Doctor
81-82	Statement of Police Constable
83-84	Resume of Police expert witness
85-86	Statement of Police expert witness
87-89	Statement of Police Sergeant
90-93	Statement of Police expert witness
94-106	Statements of 2 Police Constables
107	Internal correspondence: change of Inquest date
108	Internal correspondence: service of summons

RECORD	DESCRIPTION
109	Summons to a witness before an Inquest
110	Letter to Health Centre
111	Memo from Municipality of Metropolitan Toronto Legal Department, assigning counsel
112	Internal Correspondence, Ministry of the Attorney General, assigning counsel
113	Statement of Police expert witness
114	Internal Correspondence, recommendations as a result of Inquest
120	Letter from Ministry of the Attorney General to Homicide Department requesting a brief
121-137	Resume of expert witness
141-143	Witness list and synopsis of evidence
147-163	Resume of expert witness (duplicate of Records 121-137)
164-165	Court Notification and Statement Request
166-178	Resume of expert witness
179-215	Medical records (Records 180-194, 196-200, 202-211 and 213-214 duplicate Records 41-72)
216	Internal correspondence
217-218	Coroner's Inquest Index and Witness Information
222-223	RCMP Identification (Record 222 is a duplicate of Record 26)
225-226	Supplementary Report
228-232	Statement of Police Constable (duplicate of Records 36-38)
234-240	Statement of Police Constable
241	Police Officer's notebook entry
242-246	Police Officer's notebook entries
248-258	Statement of Police Constable
260	Statement of Doctor
262-265	Sequence of events
267	Hydro information

RECORD	DESCRIPTION
269	Supplementary Occurrence Report (duplicate of Record 6)
271	Warrant for Post Mortem examination
273-285	Occurrence and Supplementary Reports (duplicate of Records 1-9)
289-290	Letters from Ministry of the Solicitor General, Deputy Chief Coroner authorizing investigator
292-310	Statement of a witness
312	Statement of Police expert witness
314-320	Statement of nurse
322	Criminal Investigation Bureau Profile
323-325	Bail Report
327-330	Record of Arrest
331-332	Information against [appellants' son]
333	Report of Force
334-335	Messages to and from Metro Toronto Police and Bradford OPP
336	Property Occurrence Report
337-338	Confidential Instructions for Crown Counsel
343	Background notes regarding the deceased
344-363	Occurrence Reports
365-369	Statement of Doctor
372-374	Statement of Police Constable
377-379	Case Submission to the Centre of Forensic Sciences
380	Crimestoppers Report
382-392	Police dispatch information
393-399	Supplementary Report, Weapons Dangerous
400	Envelope for Autopsy photograph
401	Autopsy photograph
402	Photograph of scene

RECORD	DESCRIPTION
403	Property Receipt
404	Property tag
405-406	Autopsy negatives