



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER M-283**

**Appeal M-9300417**

**Peel Regional Police Services Board**



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# ORDER

## BACKGROUND:

The Peel Regional Police Services Board (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to the police investigation report respecting the death of an individual. The requester also wished to obtain a copy of the notebooks of two police officers and the photographs which were taken at the investigation scene. The requester is a parent of the deceased.

The Police located a total of 40 pages of records that were responsive to request. The Police also determined that the release of these documents might affect the interests of five individuals and, pursuant to section 21(1) of the Act, notified these third parties that an access request had been received. The individuals were then invited to make representations on whether the records in question should be released.

Four of these individuals consented to the release of their statements on the condition that certain personal information contained in the statements be withheld. These records were released to the requester on this basis. The fifth person did not consent to the release of that individual's statement.

After considering the submissions made, the Police granted access in full to 15 pages of the records, denied access in part to 24 pages of documentation and denied one additional page in its entirety. These records were withheld either because the Police contended that they were not responsive to the request or under the exemption found in section 14(1) of the Act (unjustified invasion of personal privacy). At this time, the requester also indicated that she was no longer interested in obtaining access to the photographs that were originally at issue.

The requester appealed the denial of access to the remaining records, and expressed the view that additional records responsive to the request should exist.

During the mediation of this appeal, the appellant advised the Commissioner's office that she was not interested in the personal information of the affected persons who agreed to the conditional disclosure of their statements. This information, therefore, which is found on pages 2, 3, 14, 15, 16, 23, 30 and 34 of the records, falls outside the scope of this appeal.

The further mediation of this appeal was not successful and notice that an inquiry was being conducted to review the decision of the Police was sent to the appellant, the Police and the individual who did not consent to the release of a witness statement. Representations were received from the appellant and the Police only.

## PRELIMINARY ISSUES:

The Police claim that parts of pages 1, 2, 9, 10, 12, 13, 14, 15, 19, 27, 28 and 32 of the records, which consist of police officer notes, are not responsive to the request. I have carefully reviewed these portions of the records and agree that they fall outside the scope of the request.

The documents which remain at issue in this appeal consist of the information which has been withheld from  
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pages 5, 6, 11, 12 and 17 (which collectively represent excerpts from police officer notebooks) and from pages 36, 37, 38 and 39 (which constitute computer generated occurrence reports) of the records.

## **ISSUES:**

The issues to be addressed in this appeal may be summarized as follows:

- 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, whether the mandatory exemption provided by section 14(1) of the Act applies to the personal information contained in the records.
- C. Whether the search undertaken by the Police for records responsive to the request was reasonable in the circumstances of the appeal.

## **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, that "personal information" means recorded information about an identifiable individual. Section 2(2) then goes on to specify that personal information does not include information about an individual who has been dead for more than 30 years.

In my view, all of the information contained in the records qualifies as personal information for the purposes of section 2(1) of the Act. I further find that this information relates to a number of identifiable individuals, including the deceased. In addition, section 2(2) of the Act does not apply to the personal information of the deceased as the death occurred within the past 30 years.

I also find that the appellant is not the personal representative of the deceased (that is, his executor or administrator) for the purposes of section 54(a) of the Act. Accordingly, the appellant's request for information, as it relates to her son's personal information, must be evaluated under section 14(1) of the Act.

**ISSUE B: If the answer to Issue A is yes, whether the mandatory exemption provided by section 14(1) of the Act applies to the personal information contained in the records.**

In Issue A, I found that all of the records contain the personal information of identifiable individuals other  
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than the appellant.

Once it has been determined that a record contains personal information, section 14(1) of the Act prohibits the disclosure of this information to any person other than to the individual to whom the information relates, except in certain circumstances. One such situation is outlined in section 14(1)(f) of the Act 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.

In order to establish that section 14(1)(f) applies, it must be shown that disclosure of the personal information would **not** constitute an unjustified invasion of personal privacy.

Sections 14(2), (3) and (4) of the Act provide guidance in determining whether the disclosure of personal information would constitute an unjustified invasion of personal privacy. In Order M-170, Commissioner Tom Wright addressed the interrelationship between these provisions in the following way:

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 compelling public interest exists in disclosure of the record in which the personal information is contained, which clearly outweighs the purpose of the section 14 exemption.

This approach has been adopted in many subsequent orders.

In their representations, the Police submit that section 14(3)(b) of the Act applies to the records. This section reads as follows:

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

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

I have carefully reviewed the records at issue, along with the representations provided by the parties. I am satisfied that the information contained in the records was compiled as part of an investigation into the

circumstances surrounding the death of the deceased. That investigation, in turn, was directed towards determining whether there had been a possible violation of The Criminal Code for which charges could be laid. On this basis, I am satisfied that the personal information contained in the statements falls within the section 14(3)(b) presumption.

I have also considered section 14(4) of the Act and find that none of the personal information in the records comes within the scope of this provision. In addition, the appellant has not argued that the public interest override set out in section 16 of the Act applies to the facts of this case.

Accordingly, I find that the disclosure of the personal information contained in the records would constitute an unjustified invasion of the personal privacy of the individuals to whom the information relates and that the records are properly exempt from disclosure under section 14(1) of the Act.

**ISSUE C: Whether the search undertaken by the Police for records responsive to the request was reasonable in the circumstances of the appeal.**

The appellant has expressed the belief that her son was the victim of foul play. For this reason, and based on her impression that the materials which the Police have located are not definitive in nature, the appellant believes that additional records responsive to her request should exist.

In their representations, the Police describe the steps taken to locate responsive records, the particulars of the searches undertaken and the personnel responsible for identifying the records at issue. The Police have also provided the Commissioner's office with a sworn affidavit which elaborates on these points.

The affidavit affirms that all of the information that is responsive to the request is contained in the notebooks of the five police officers who investigated the case. The document then goes on to indicate that this originating information was transmitted in synopsis form into the "CASPER system occurrence file". This system generates police occurrence reports such as those found on pages 33 through 40 of the records.

The affidavit confirms that, following the initiation of further searches, no additional records were located. On this basis, the Police conclude that no further records exist that are responsive to the request.

Where a requester provides sufficient details about the records that he or she is seeking and a police force indicates that the records do not exist, it is my responsibility to ensure that the institution has made a reasonable effort to identify records which are responsive to the request.

In my view, the Act does not require that a municipality prove to the degree of absolute certainty that the requested records do not exist.

I have carefully reviewed the representations of the Police and its accompanying affidavit. I am satisfied that the Police have taken all reasonable steps to locate the records which would be responsive to the

appellant's request and I find that the search was reasonable in the circumstances of this appeal.

**ORDER:**

I uphold the decision of the Police.

Original signed by: \_\_\_\_\_  
Irwin Glasberg  
Assistant Commissioner

\_\_\_\_\_ March 11, 1994