



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-469

Appeal M-9400614

Niagara Regional Police Services Board



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Téloc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The Niagara Regional Police Services Board (the Police) received a request for access to records relating to the investigation of the disappearance and death of an individual. The Police rely on the following exemption to deny access to the record:

- invasion of privacy - section 14(1)

The requester appealed this decision to the Commissioner's office. In his letter of appeal, the appellant raised the following section of the Act:

- public interest in disclosure - section 16

The record at issue consists of missing persons reports, general incident reports, property reports, supplementary reports and sudden death reports all relating to the individual's disappearance and death.

A Notice of Inquiry was provided to the appellant and the Police. Representations were received from both parties.

DISCUSSION:

INVASION OF PRIVACY

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual. I have reviewed the information contained in the record, and I find that it satisfies the definition of personal information. In my view, the personal information is that of the deceased and several other identifiable individuals. None of the personal information in the record relates to the appellant.

Section 2(2) of the Act states that personal information does not include information about an individual who has been dead for more than 30 years. As the death occurred within the past 30 years, section 2(2) of the Act does not apply.

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 the individual to whom the information relates, except in certain circumstances. One such exception is outlined in section 14(1)(f).

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 their representations, the Police rely on the following presumptions found in section 14(3) of the Act:

- personal information relating to medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation (section 14(3)(a))
- personal information compiled and identifiable as part of an investigation into a possible violation of law (section 14(3)(b))

The Police submit that the record was compiled during the course of a law enforcement investigation into the disappearance and death of the individual. The investigation was undertaken to determine if any possible violations of the Criminal Code, such as abduction, unlawful confinement, homicide or a sexual offence had occurred.

Where one of the presumptions found in section 14(3) applies to the personal information found in a record, the only way such a presumption can be overcome is if the personal information at issue falls under section 14(4) of the Act or where a finding is that section 16 of the Act applies to the personal information.

Section 16 has two requirements which must be satisfied in order to invoke the application of the so-called "public interest override": there must be a **compelling** public interest in disclosure, and this compelling public interest must **clearly** outweigh the **purpose** of the exemption, as distinct from the value of disclosure of the particular record in question.

The appellant submits that the circumstances of this case are highly suspicious. Therefore, in his view, disclosure of the record is in the best interests of the public "as it represents a unique opportunity to closely examine the investigative techniques applied to the suspicious disappearance of a child in a region whose police force is obviously well financed." The appellant states that the Police have been the subject of significant public investigation and investment over the past five years and, as the investigations have been funded by public money, the public has the right to direct insight into these investigations.

Having reviewed the record and the representations of both parties, I have made the following findings:

- (1) The record was compiled as part of an investigation into a possible violation of law. Accordingly, the disclosure of the personal information in the record would constitute a presumed unjustified invasion of the personal privacy of the deceased and other individuals under section 14(3)(b).
- (2) None of the personal information contained in the record falls under section 14(4).
- (3) There does not exist a **compelling** public interest in the disclosure of the personal information which would **clearly** outweigh the purpose of the section 14 exemption. In making this finding I am mindful of the fact that section 14 is a mandatory exemption whose fundamental purpose is to ensure that the personal privacy of individuals is maintained except where infringements on this interest are justified.

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

February 21, 1995