



Information and Privacy  
Commissioner/Ontario  
Commissaire à l'information  
et à la protection de la vie privée/Ontario

# **ORDER M-544**

**Appeal M-9400725**

**Hamilton-Wentworth Regional Police Services Board**



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## **NATURE OF THE APPEAL :**

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The Hamilton-Wentworth Regional Police Services Board (the Police) received a request for all records regarding a sudden death, as well as "all paperwork" on the deceased's former common-law wife. The request was made by the daughter of the deceased.

With respect to records relating to the sudden death, the daughter listed the specific types of records she was seeking, including police officers' notes, 911 tapes, photographs, the autopsy report, the coroner's report, videotapes of the death scene and the Firearms Acquisition Certificate (FAC) for the weapon that had been used. With respect to records pertaining to the common-law wife, the requester seeks the incident report number concerning an alleged break and enter, a copy of the incident report and the badge number of the investigating officer.

The Police denied access to the Sudden Death Report and "investigation which [the daughter] requested" on the basis of the following exemptions contained in the Act:

- law enforcement report - section 8(2)(a)
- invasion of privacy - section 14(1)

The Police indicated further that section 54(a) of the Act (exercise of rights of deceased) did not apply in this case.

In appealing the decision of the Police, the appellant indicated that she and her family had concerns about the manner in which the Police investigated her father's death. She indicates that she has been advised that much of the information she seeks should be available to her without the need to rely on section 54(a) of the Act. She further states that pursuant to section 18(2) of the Coroners Act, information must be made available to any family member upon request.

During mediation of this appeal, the appellant agreed not to pursue the issues pertaining to the Coroners Act.

A Notice of Inquiry was provided to the Police, the appellant and four individuals identified in the records (the affected persons). The decision letter provided by the Police did not appear to address all parts of the appellant's request. The Commissioner's office, therefore, raised the reasonableness of the search conducted by the Police as an issue in this appeal. Representations were received from the Police and the appellant only.

Included with their representations, the Police attached a revised decision letter in which they specify that access is denied to the Sudden Death Report, and "the investigation" which includes an officer's notes, the FAC, as well as photographs and any information pertaining to the common-law wife. They indicate further that access cannot be granted to the Autopsy Report, the Coroner's Report, video tapes of the scene or 911 tapes as these records do not exist.

The revised decision letter addressed the specific portions of the request. Further, following receipt of the revised decision letter, the appellant indicated that she did not take issue with the portion of the decision pertaining to the Autopsy and Coroner's Reports, or the video and 911 tapes. The reasonableness of the search undertaken by the Police is, therefore, no longer at issue.

The records at issue in this appeal consist of the following:

- **Record 1** - Sudden Death Report and Supplementary Occurrence Report with a Firearms Acquisition Certificate (FAC) attached (pages 1 - 10)
- **Record 2** - Handwritten notes regarding investigation of a Break and Enter (B&E) and sudden death (pages 12 - 13)
- **Record 3** - Letter from the Regional Coroner to sister of deceased re: deceased and meeting with family (page 14)
- **Record 4** - Occurrence Report and Supplementary Report re: B&E (pages 11 and 15 - 18)
- **Record 5** - Separation Agreement (pages 19 - 20)
- **Record 6** - Police Officer's Notes (pages 21 - 31)
- **Record 7** - FAC (police copy) (page 32)
- **Record 8** - Photographs of scene of death.

## **PRELIMINARY MATTER:**

### **EXERCISE OF RIGHTS OF DECEASED**

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including any identifying number assigned to the individual and the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual. I have reviewed the information contained in the records and find that it satisfies the definition of personal information. I further find that the information relates to the deceased, his common-law wife and other individuals and that none of the personal information relates to the appellant.

Section 36(1) of the Act gives individuals a general right of access to their own personal information held by a government body. In addition to the general right of access an individual has to his or her own personal information, section 54(a) provides that:

Any right or power conferred on an individual by this Act may be exercised,

if the individual is deceased, by the individual's personal representative if exercise of the right or power relates to the administration of the individual's estate;

The Police take the position in their representations that section 54(a) is of particular relevance to any request for information pertaining to a deceased individual. They state:

The Act provides exact situations when deceased's personal information can be released:

1. to a deceased person's personal representative,
2. to administer the individual's estate.

This section **states when and only when the personal information of a deceased person can be released.** (emphasis added) If these criteria are not met the deceased's information cannot be released.

In my view, the Police have misconstrued the intent of this section, in that they have interpreted it as a definitive prohibition on disclosure of information pertaining to deceased individuals except in the very exceptional and narrow circumstances set out in the section. In essence, the Police have applied section 54(a) as an exemption against disclosure of personal information as it relates to a deceased individual.

Section 54 of the Act should be interpreted rather, as simply providing a mechanism whereby access rights may, in certain defined circumstances, be exercised on behalf of an individual by another party.

With respect to section 54(a), if it is determined that the records contain the personal information of the deceased, the appellant would be able to exercise the deceased's right to request the deceased's personal information, **if** she is able to demonstrate that she is the deceased's "personal representative" **and** that her request for access to the information "relates to the administration of the deceased's estate".

It is also to be noted that, if section 54(a) applies, the deceased retains his or her right to personal privacy except insofar as the administration of his or her estate is concerned. The personal privacy rights of deceased individuals are expressly recognized in section 2(2) of the Act, where "personal information" is defined to specifically include that of individuals who have been dead for less than thirty years.

In order to give effect to these rights, I believe that the phrase "relates to the administration of the individual's estate" in section 54(a) should be interpreted narrowly to include only records which the personal representative requires in order to wind up the estate.

In this appeal, the records do not contain the appellant's personal information. Accordingly, if it is determined that section 54(a) does not apply in the circumstances, then the appellant is placed in the same position as any other person who requests the personal information of another individual, and access to the records would be determined in accordance with the provisions found in Part I of the Act.

At the time of the request, the appellant did not raise section 54(a) as being applicable in the circumstances. Nor did she indicate in initiating this appeal or during the mediation stage that section 54(a) was an issue. In her representations, however, she provides a letter from her solicitor which indicates that an application has been filed in the Ontario Court (General Division) to appoint her as administrator of her father's estate, and that Letters of Administration are expected to be granted in the near future. The appellant states that, at the very least, records pertaining to the B&E pertain to the administration of her father's estate.

The term "personal representative" in section 54(a) of the Act means an executor, an administrator, or an administrator with will annexed (Order P-294). In this case, it is clear that, should Letters of Administration be granted to the appellant, she would be considered the deceased's personal representative within the meaning of section 54(a) of the Act. However, any finding on this point is premature as the Letters of Administration have not been granted. Accordingly, I find that the appellant is not the deceased's personal representative.

Further, even if I were to find that the appellant is the deceased's personal representative, in reviewing the records, I am of the view that the exercise of the right of access sought by the appellant does not relate to the administration of the estate of the deceased in the sense contemplated by section 54(a).

Therefore, the appellant is not entitled to exercise the deceased's rights regarding this information under section 54(a) of the Act. Accordingly, the appellant's request for information relating to the deceased is in her personal capacity, and is subject to examination pursuant to the provisions of Part I of the Act.

## **DISCUSSION:**

### **INVASION OF PRIVACY**

I found above that the records all contain the personal information of the deceased, the common-law wife and a number of other individuals and that none of the records contain the personal information of 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 except in certain circumstances.

Section 14(2), (3) and (4) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of personal privacy. Where one of the presumptions in section 14(3) applies to the personal information found in a record, the only way such a presumption against disclosure can be overcome is if the personal information falls under section 14(4) or where a finding is made that section 16 of the Act applies to the personal information.

If none of the presumptions in section 14(3) apply, the Police must consider the application of the factors listed in section 14(2) of the Act, as well as all other circumstances that are relevant in the circumstances of the case.

In their representations, the Police submit that the presumptions against disclosure contained in sections 14(3)(a) (relates to medical condition), 14(3)(b) (information compiled and identifiable as part of an investigation into a possible violation of law) and 14(3)(d) (employment or educational history) apply to the information contained in the records.

In her representations, the appellant outlines her family's concerns about the manner in which the Police investigated her father's death and all incidents surrounding his death. In particular, she is concerned that proper procedures were not followed by the Police during their investigation. She believes, further, that the Police have deceived her family.

I have reviewed the records at issue and have made the following findings:

1. With the exception of Record 3, the records were compiled and are identifiable as part of an investigation conducted by the Police into the circumstances of the death of the deceased or, as part of their investigation into a possible B&E. Accordingly, I am of the view that the presumption contained in section 14(3)(b) applies to them.
2. I find that section 14(4) does not apply to the personal information contained in these records, and the appellant has not claimed that section 16 of the Act applies in this appeal.
3. I find that, with the exception of Record 3, disclosure of the personal information in the records would constitute an unjustified invasion of the personal privacy of the deceased and other individuals referred to in the records and that this information is properly exempt from disclosure under section 14(1) of the Act.
4. Record 3 is a letter addressed to a family member from the Regional Coroner which makes reference to a meeting with the family of the deceased. In my view, none of the presumptions in section 14(3) apply to the information contained in this record. I have also reviewed the factors in section 14(2) and find that none of them apply in the circumstances. Accordingly, disclosure of this record would not constitute an unjustified invasion of privacy and section 14(1) does not apply to it.

## LAW ENFORCEMENT

The Police claim that section 8(2)(a) applies to Records 1 - 5, 7 and 8 . I have found that all of these records are exempt under section 14(1), with the exception of Record 3. Accordingly, I will only consider the application of section 8(2)(a) to Record 3.

In order to qualify for exemption under section 8(2)(a) of the Act, a record must satisfy each part of the following three-part test:

1. the record must be a report; **and**
2. the report must have been prepared in the course of law enforcement, inspections or investigations; **and**
3. the report must have been prepared by an agency which has the function of enforcing and regulating compliance with a law.

### Part One

In order to satisfy the first part of the test, a record must consist of a formal statement or account of the results of the collation and consideration of information. Generally speaking, results would not include mere observations or recordings of fact (Order 200).

The Police state that the Sudden Death Report (Record 1) is a report within the meaning of section 8(2)(a), and that it includes investigative records, witness interviews and statements. Record 3, a letter from the Regional Coroner, is clearly not, in and of itself a report within the meaning of section 8(2)(a), nor do the Police claim that it is. Rather, they indicate that as an attachment to the Sudden Death Report, the record is incorporated into the report, thereby falling within the exemption in section 8(2)(a).

In my view, the first step in the analysis is to determine whether Record 3 can be characterized as an attachment to the Sudden Death Report. If it can be so characterized, the second step would be to determine whether the Sudden Death Report is a law enforcement report within the meaning of section 8(2)(a).

While it is possible that a "report" can include appendices or attachments as an integral part of the document, I am not satisfied that Record 3 was obtained by the Police or used in any way as part of their investigation or in the course of law enforcement generally. Although indirectly related to information recorded in the Sudden Death Report, I find that the record is not integral to the formal accounting of the results of the collation and consideration of information. I find, therefore, that it is not a part of the Sudden

Death Report as a unique and distinctive record, and section 8(2)(a) does not apply to it. As no other exemptions have been claimed for this record, it should be disclosed to the appellant.

**ORDER:**

1. I uphold the decision of the Police to withhold Records 1, 2, and 4 - 8.
2. I order the Police to disclose Record 3 to the appellant within thirty-five (35) days of the date of this order but not before the thirtieth (30th) day after the date of this order.
3. In order to verify compliance with this order, I reserve the right to require the Police to provide me with a copy of the record disclosed to the appellant pursuant to Provision 2.

Original signed by: \_\_\_\_\_  
Laurel Cropley  
Inquiry Officer

\_\_\_\_\_ June 7, 1995