



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

ORDER M-919

Appeal M_9600313

Metropolitan Toronto Police Services Board



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BACKGROUND:

An individual was questioned by his employer with respect to a transfer of corporate funds. The individual then disappeared and the employer contacted the Metropolitan Toronto Police Services Board (the Police) to report an alleged fraud. A missing persons report was also filed with the Police. It was subsequently discovered that the individual had apparently committed suicide. In this order, I will refer to this individual as the “deceased”.

The employer subsequently commenced an action against the estate of the deceased. The deceased’s wife (hereafter referred to as the “appellant”) was also named as a defendant. Later, by consent order of the court, the appellant was appointed litigation administrator and was added in this capacity as a party defendant in the action. The court also ordered that the appellant be added as a party defendant in the action in her personal capacity.

NATURE OF THE APPEAL:

Counsel acting for the appellant personally, and in her capacity as litigation administrator, submitted a request to the Police under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The request was for access to copies of a Missing Persons Report, a Sudden Death Report and a Fraud Report prepared by the Police in connection with the deceased. At the request of the Police, counsel provided them with a copy of a court order naming his client as litigation administrator.

The Police issued a decision in which they denied access to the records on the basis that disclosure would constitute an unjustified invasion of the personal privacy of the deceased pursuant to section 14(1) of the Act. In their decision, the Police also explained why, in their opinion, section 54(a) of the Act (right of access of a personal representative) did not apply in the circumstances of this case.

Counsel filed an appeal of this decision.

A Notice of Inquiry was sent to the Police, the employer and counsel for the appellant in her capacity as litigation administrator. In addition, a copy of the Notice was sent to the appellant in her personal capacity. This office was subsequently advised that the appellant had retained new counsel and, accordingly, a copy of the Notice of Inquiry was sent to this individual. Representations were received from the Police and counsel for the appellant.

The records at issue are:

- (1) A Sudden Death Report dated March 19, 1996 (two pages).
- (2) A Supplementary Report to Record 1 dated March 20, 1996 (one page).
- (3) A Fraudulent Document Report dated March 20, 1996 (one page).

- (4) A Supplementary Report to Record 3 dated March 20, 1996 (one page).
- (5) A Homicide and Sudden Death Report dated March 18, 1996 (one page).
- (6) A Supplementary Report to Record 5 dated March 18, 1996 (five pages).
- (7) A General Property Report and Receipts dated March 18, 1996 (five pages).
- (8) A Missing Persons Occurrence Report dated March 18, 1996 (three pages).
- (9) A Fraudulent Document Occurrence Report dated March 20, 1996 (one page).

DISCUSSION:

RIGHT OF ACCESS BY A PERSONAL REPRESENTATIVE

Section 2(1) of the Act defines "personal information", in part, to include recorded information about an identifiable individual. Section 2(2) provides that personal information does not include information about an individual who has been dead for more than 30 years. Since the deceased died last year, section 2(2) does not apply in the circumstances of this case.

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 contained in Records 1 and 8 contain the personal information of both the deceased and the appellant, while the balance of the records contain the personal information solely of the deceased.

Based on the facts of this case, I will consider whether, under section 54(a) of the Act, the appellant is entitled, as the litigation administrator of the estate of the deceased, to exercise the same right of access to the personal information contained in the records as the deceased.

Under section 54(a), the appellant would be able to exercise the deceased's right to request and be granted access to the deceased's personal information if she is able to:

1. demonstrate that she is the "personal representative" of the deceased; and
2. demonstrate that her request for access "relates to the administration of the deceased's estate".

Personal Representative

The meaning of the term "personal representative" as it appears in section 66(a) of the Freedom of Information and Protection of Privacy Act, the equivalent of section 54(a) of the Act, was considered by the Divisional Court in a judicial review of Order P-1027 of this office. In Adams v. Ontario (Information and Privacy Commissioner) (1996), 136 D.L.R. (4th) 12 at 17-19, the court stated:

Although there is no definition of "personal representative" in the Act, when that phrase is used in connection with a deceased and the administration of a

deceased's estate, it can have only one meaning, which is the meaning set out in the definition contained in the *Estates Administration Act*, R.S.O. 1990, c. E.22, s.1, the *Trustee Act*, R.S.O. 1990, c. T.23, s.1; and in the *Succession Law Reform Act*, R.S.O. 1990, c. S.26, s.1:

1(1) "personal representative" means an executor, an administrator, or an administrator with the will annexed.

...

The question to be decided is whether the person seeking the information is the personal representative of the deceased individual with the power and authority to administer the deceased's estate.

...

... The executor may require certain financial information for the administration of the estate, or even certain personal information in order to pursue a lawsuit on behalf of the estate ... [emphasis added]

Based on the court's analysis set out above, I am of the view that a person, in this case the appellant, would qualify as a "personal representative" under section 54(a) of the Act if he or she is "an executor, an administrator, or an administrator with the will annexed with the power and authority to administer the deceased's estate".

I will first determine whether the appellant qualifies as "an administrator with the power and authority to administer the deceased's estate".

Black's Law Dictionary, 6th ed. (St. Paul: West Publishing Co., 1990), p.44 defines the term "administration of estates" as follows:

Administration of estates. The management and settlement of the estate of an intestate decedent, or of a testator who has no executor, performed under the supervision of the court, by a person duly qualified and legally appointed, and usually involving: (1) the collection of the decedent's assets; (2) payment of debts and claims against the estate; (3) payment of estate taxes; and (4) distribution of the remainder of the estate among those entitled thereto. The administration of an estate runs from the date of an individual's death until all the assets have been distributed and liabilities paid. Such administration is conducted by an administrator or an executor.

The Black's definition goes on (at p.45) to list 13 different types of estate administration. Included in the list are the following:

Ad prosequendum. An Administrator appointed to prosecute or defend a certain action ... or actions in which the estate is concerned.

General administration. The grant of authority to administer upon the entire estate of a decedent, without restriction or limitation, whether under the intestate laws or with will annexed.

Special administration. Authority to administer upon a few particular effects of a decedent, as opposed to authority to administer his whole estate.

Thus, at law there are various types of administrators of an estate. It is clear that there may be more than one administrator of an estate, and that there are a wide variety of powers and responsibilities that may be given to an administrator. It seems that the typical administrator would be referred to as the “general administrator”, and would have an unlimited authority to “administer upon the entire estate”. On the other hand, some administrators, such as the special administrator, have a limited power to deal only with certain matters respecting the estate.

In my view, each of these various types of administrators can be considered, in their particular roles, to be “administering” the estate. Thus, for example, the administrator *ad prosequendum*, as defined above, (the equivalent of the “litigation administrator” in the Ontario context) can be said to be “administering the estate”, albeit in a limited fashion, to the extent that he or she is defending or prosecuting an action on behalf of the estate.

In my opinion, this interpretation is consistent with the Divisional Court decision in Adams, since the court in effect acknowledged that pursuing an action on behalf of an estate constituted part of the administration of an estate. At p.19 the court stated:

The executor may require certain financial information for the administration of the estate, or even personal information in order to pursue a lawsuit on behalf of an estate.

As indicated, in this case the appellant is defending, rather than pursuing an action on behalf of the estate of the deceased. However, in my opinion, there is no substantive distinction to be made between the role of a litigation administrator as plaintiff or defendant in an action. Both roles involve an individual taking actions and making decisions in the best interests of the estate for the purpose of ensuring that the assets are either increased or not decreased as a result of the litigation.

Based on the aforementioned analysis, I find that the appellant, in her capacity as litigation administrator of the estate of the deceased, is “an administrator with the power and authority to administer the deceased’s estate” for the limited purpose of defending the action in question. Accordingly, the first part of the section 54(a) test has been satisfied.

“Relates to the Administration of the Individual’s Estate”

Given that a personal representative, in this case an administrator, may have a wide range of different powers and/or duties, one must take into account the precise powers and duties vested in the particular administrator in order to determine the meaning of the phrase “administration of the estate”.

In this case, I have determined that the appellant is a personal representative only to the extent that she has been appointed litigation administrator by the court. Thus, in my view, the appellant

must establish that she is seeking the records at issue in relation to the defence of the court action.

The Police submit that the appellant has failed to establish that the records sought are for the purpose of administering the estate. They state that the appellant has indicated that she seeks access to the records for the purposes of the litigation against the estate and requires copies of the documents in her capacity "as litigation administrator".

The appellant states that the circumstances surrounding the death of the deceased "... are potentially relevant both to the defence of the above-referenced proceedings and, generally, in the administration of ... the estate".

I have reviewed both the amended statement of claim of the employer and the appellant's amended statement of defence in the action. The amended statement of claim does not raise as a fact or issue the circumstances surrounding the death of the deceased. However, the amended statement of defence does state that, as a result of the employer plaintiff confronting the deceased with serious allegations of fraud, the deceased committed suicide. The defence goes on to state that the employer breached his duty of care towards the deceased, thus causing his death.

As I have indicated, the records generally relate to the death of the deceased, the fraud complaint made by the employer and the missing persons report. Based on the pleadings in the statement of defence cited above, it seems reasonable that the type of information contained in the records could very well be relevant to an issue in the litigation.

On this basis, I find that the request of the appellant as litigation administrator relates to the administration of the estate of the deceased, i.e. the defence of the court action. Accordingly, I find that the appellant has satisfied the second part of the section 54(a) test.

Pursuant to section 54(a), the appellant is therefore entitled to exercise the same right of access to the requested records as the deceased. In both her personal capacity and her capacity as litigation administrator as found under section 54(a), the appellant has a right of access under section 36(1) of the Act to her own personal information and the personal information of the deceased contained in the records.

The only exemption claimed by the Police to deny access to the records is section 14(1) (invasion of privacy) on the basis that disclosure of the records would result in an unjustified invasion of the personal privacy of the deceased. However, as the appellant may now exercise the access rights of the deceased, this exemption has no application. Therefore, the records should be disclosed to the appellant in their entirety.

ORDER:

1. I order the Police to disclose the records to the appellant by sending her a copy by **April 24, 1997**.

2. In order to verify compliance with Provision 1 of this order, I reserve the right to require the Police to provide me with a copy of the records that are disclosed to the appellant pursuant to Provision 1.

Original signed by: _____
Anita Fineberg
Inquiry Officer

_____ April 3, 1997