



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

ORDER M-977

Appeal M_9700114

Ottawa-Carleton Regional Police Services Board



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NATURE OF THE APPEAL:

The Ottawa-Carleton 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 all information compiled by the Police from 1991 to the date of the request relating to a named individual (the deceased) who was shot by a member of the Police. The requester also sought access to the name of the individual who brought a complaint against the deceased which caused the Police to attend at the residence of the deceased with the intention to arrest him. Finally, the requester also sought any information sworn by any complainant in regards to the grounds for arrest on that date. The requester is a solicitor representing members of the deceased's family.

The Police denied access to the records in their entirety, based on the following exemptions:

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

The appellant appealed the decision of the Police.

The records consist of 278 pages of Police General Occurrence Reports, witness statements, investigation reports, court-related documents, CPIC reports, ambulance reports and police officers' notebooks.

A Notice of Inquiry was sent to the Police, the appellant, and three other individuals named in the records whose interests could be affected by the outcome of this appeal (the affected persons). Representations were received from all parties.

PERSONAL REPRESENTATIVE

Section 54(a) of the Act states that the appellant would be able to exercise the deceased's right to request and be granted access to his personal information if he is able to demonstrate that he is the deceased's "personal representative" **and** if his request for access to the information "relates to the administration of the individual's estate".

In order to establish that the appellant is the deceased's "personal representative" for the purpose of section 54(a), the appellant would have to provide evidence of his authority to deal with the deceased's estate. Producing letters of probate, letters of administration or ancillary letters probate under the seal of the proper court is required in this regard.

The only evidence produced by the appellant is a direction and authorization from the family of the deceased appointing the appellant to act on their behalf. In my view, this is not sufficient to establish that the appellant or any of the family members of the deceased are the deceased's personal representative for the purpose of section 54(a) of the Act.

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 records and I find that they contain the personal information of the deceased and a number of other individuals, including the affected persons.

Where a record contains the personal information of individuals other than the appellant, section 21(1) of the Act prohibits an institution from disclosing it except in the circumstances listed in sections 21(1)(a) through (f). Of these, only section 21(1)(f) could apply in this appeal. Section 21(1)(f) permits disclosure if it “does not constitute an unjustified invasion of personal privacy.”

Sections 14(2), (3) and (4) provide guidance in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy. Disclosing the types of personal information listed in section 14(3) is presumed to be an unjustified invasion of personal privacy. If one of the presumptions applies, the Police can disclose the personal information only if it falls under section 14(4) or if section 16 applies to it. If none of the presumptions in section 14(3) apply, the Police must consider the factors listed in section 14(2), as well as any other relevant circumstances.

The Police state that the personal information contained in the records was compiled as part of a number of investigations into possible violations of law, specifically the commission of criminal offenses by the appellant. Accordingly, they argue that the presumption in section 14(3)(b) applies to exempt this information from disclosure. This section provides:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where 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.

The Police do not submit that the records were compiled or are identifiable as part of an investigation into a possible violation of law committed by any individual other than the appellant.

Records 1-35 relate to the prior involvement of the deceased with the Police. I am satisfied that each of these records was compiled and is identifiable as part of an investigation into a possible violation of law and section 14(3)(b) applies.

The remaining records relate to the police shooting. The appellant submits that section 14(3)(b) should not apply, as the deceased can no longer be charged with a criminal offence or be the subject of criminal investigation. I disagree. The investigation into a possible violation of law commenced before the deceased was pronounced dead at the hospital, and continued after his

death. Although the deceased clearly could not be **charged** with a violation of law after his death, the details of his conduct continued to be relevant, particularly whether he had committed a possible violation of law, and continued to be investigated by the Police. Accordingly, I find that section 14(3)(b) applies.

Section 14(4) does not apply in the circumstances of this case, and the appellant has not argued that there is a compelling public interest in disclosure of this personal information pursuant to section 16 of the Act.

Therefore, I find that the exception in section 14(1)(f) has not been established and the personal information in the records is exempt under section 14(1).

ORDER:

I uphold the decision of the Police to deny access to the records.

Original signed by: _____ July 25, 1997
Holly Big Canoe
Inquiry Officer