



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER M-1092**

## **Appeal M-9700321**

### **Windsor Police Services Board**



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## **NATURE OF THE APPEAL:**

A request was submitted under the Municipal Freedom of Information and Protection of Privacy Act (the Act) to the Windsor Police Services Board (the Police) for access to a Police report regarding a deceased family member. The Police located the records responsive to the request and denied access to them on the basis of section 14(1) (invasion of privacy) of the Act. The decision to deny access was appealed to this office.

During the course of this appeal, it was clarified that the request to the Police was submitted on behalf of the deceased's family, in particular, the deceased's sister (the sister) who is the next of kin. The individual who signed the original request was the sister's son-in-law who was assisting her. Consequently, the sister will be considered the appellant in this inquiry.

This office provided a Notice of Inquiry to the appellant and the Police. Because one of the records appeared to contain the appellant's personal information, the Appeals Officer raised the possible application of section 38(b) (invasion of privacy) of the Act.

## **RECORDS:**

The records at issue consist of a four-page police report entitled "Homicide or Sudden Death Report" and a one-page document entitled "Investigation Report".

## **DISCUSSION:**

### **RIGHT OF ACCESS BY A PERSONAL REPRESENTATIVE**

Section 54(a) of the Act states:

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.

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 "related to the administration of the deceased's estate".

### **Personal Representative**

In Order M-919, former Inquiry Officer Anita Fineberg reviewed the law with respect to section 54(a), and came to the following conclusion:

... 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”.

The appellant provided a copy of papers from the Probate Court which indicates that she was required to petition the court for reimbursement of costs associated with the funeral of the deceased. I accept that the appellant is the next of kin of the deceased. However, she has provided insufficient evidence that she is the “personal representative” of the deceased within the meaning of section 54(a). Accordingly, I find that the appellant has not established that she is the “personal representative” of the deceased. Therefore, her rights to access under the Act must be determined in accordance with sections 14(1) and 38(b).

## **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 find that Record 1 contains the personal information of the appellant and other identifiable individuals including the deceased. It should be noted, however, that the only reference to the appellant in this record is in her capacity of next of kin. I find that Record 2 contains only the personal information of the deceased.

Where a record contains the personal information of both the appellant and another individual, section 38(b) allows the institution to withhold information from the record if it determines that disclosing that information would constitute an unjustified invasion of another individual’s personal privacy. On appeal, I must be satisfied that disclosure **would** constitute an unjustified invasion of another individual’s personal privacy. The appellant is not required to prove the contrary.

Where, however, the record only contains the personal information of another individual, section 14(1) of the Act prohibits an institution from disclosing it except in the circumstances listed in sections 14(1)(a) through (f). Of these, only section 14(1)(f) could apply in this appeal. It permits disclosure if it “does not constitute an unjustified invasion of personal privacy.”

In both these situations, sections 14(2) and (3) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the personal privacy of the individual to whom the information relates. Section 14(2) provides some criteria for the head to consider in making this determination. Section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy.

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 finding is made under section 16 of the Act that  
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there is a compelling public interest in disclosure of the information which clearly outweighs the purpose of the section 14 exemption.

Section 14(3)(b) states that:

A disclosure of personal privacy 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.

The Police indicate that the record was compiled as part of an investigation into a possible violation of law. In this regard, the Police advise that police officers were called to the scene of a sudden death in order to determine whether the deceased had died of natural causes or whether foul play was suspected and possible charges could be laid under the Criminal Code. The Police indicate that although the final outcome was that the deceased's death was from natural causes, an initial investigation did take place in order to make this determination.

I have reviewed the records and am satisfied that the presumed unjustified invasion of personal privacy in section 14(3)(b) applies to the personal information in the records, because this information was clearly "compiled" and is "identifiable" as part of an investigation into a possible violation of law (the Criminal Code). Despite the fact that a determination was made that no criminal act had occurred, the investigation was conducted with a view towards determining whether or not this was the case, and this is sufficient to bring the records within the presumption.

I find that neither section 14(4) nor section 16 are applicable to the information in the records. Accordingly, I find that the records are properly exempt under sections 14(1) and 38(b) of the Act.

**ORDER:**

I uphold the decision of the Police.

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

\_\_\_\_\_  
 April 8, 1998