



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

# **ORDER MO-1279**

**Appeal MA-990136-1**

**Ottawa-Carleton Regional Police Services Board**



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## **NATURE OF THE APPEAL:**

The requester is a woman whose infant son died while in the custody of the Children's Aid Society of Ottawa-Carleton (CAS). The requester submitted a request to the Ottawa-Carleton Regional Police Service (the Police) under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to all information held by the Police concerning the incident.

The Police identified 152 pages of records responsive to the request. The Police provided full access to five pages (pages 101 to 104, 137), and provided either partial or no access to the remaining 147 pages. The Police indicated that they were providing access to the requester's personal information and statements, as well as observations/comments by police officers about her. Access to certain information was denied on the basis of sections 8(2)(a) (law enforcement report) and 14(1) (unjustified invasion of other individuals' privacy) of the Act. The Police also cited section 14(3)(b) (presumed unjustified invasion of personal privacy/law enforcement information) in support of their section 14(1) exemption claim.

The requester (now the appellant) appealed the Police's decision to withhold records.

During the mediation stage of the appeal, the appellant took the position that because the incident involved the CAS, the withheld information should be disclosed because there was a compelling public interest in disclosure within the meaning of section 16 of the Act. The appellant also indicated that she should have access to information concerning her son based on section 54(c) of the Act, which states that any right or power conferred on an individual by the Act may be exercised, if the individual is less than sixteen years of age, by a person who has lawful custody of the individual.

I sent a Notice of Inquiry setting out the issues in the appeal to the appellant and the Police. I received representations from the Police only.

## **RECORDS:**

The records at issue in this appeal, numbering 147 pages withheld in part or in whole, consist of Police General Occurrence Reports, Police Follow-Up Investigation Reports, Police Investigation Reports, excerpts from police officers' notebooks, correspondence from the coroner, Forensic Laboratory Reports, Police Statements of Witnesses, Fire Department Reports, and a Hospital Autopsy Report.

## **DISCUSSION:**

### **RIGHT OF ACCESS BY PERSON WITH LAWFUL CUSTODY**

Section 54(c) of the Act reads:

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

if the individual is less than sixteen years of age, by a person who has lawful custody of the individual.

The material before me, including the appellant's original request, indicate that the CAS, and not the appellant, had lawful custody of the appellant's son at the time of his death. As a result, I conclude that section 54(c) cannot apply in these circumstances.

## **PERSONAL INFORMATION**

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual.

The records contain information about the appellant, the appellant's son, and various witnesses to the events surrounding the death of the appellant's son, including detailed information about his physical and medical condition as observed by the police and fire department personnel. As a result, information in the records qualifies as personal information of those individuals under the definition of that term in section 2(1) of the Act, subject to any finding I may make under section 2(2). That section reads:

Personal information does not include information about an individual who has been dead for more than thirty years.

Since the son has been deceased for less than thirty years, the information in the records about him qualifies as the son's personal information.

## **RIGHT OF ACCESS TO ONE'S OWN PERSONAL INFORMATION/UNJUSTIFIED INVASION OF OTHER INDIVIDUALS' PRIVACY**

Section 36(1) of the Act gives individuals a general right of access to their own personal information held by a government body. Section 38 provides a number of exceptions to this general right of access.

Under section 38(b) of the Act, where a record contains the personal information of both the appellant and other individuals and the institution determines that the disclosure of the information would constitute an unjustified invasion of the personal privacy of other individuals, the institution has the discretion to deny the requester access to that information.

Where, however, the record only contains the personal information of other individuals, and the release of this information would constitute an unjustified invasion of the personal privacy of these individuals, section 14(1) of the Act prohibits an institution from releasing this information.

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 institution to consider in making this determination. Section 14(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy. Section 14(4) refers to certain types of information the disclosure of which does not constitute an unjustified invasion of personal privacy. The Divisional Court has stated that once a presumption against disclosure has been established, it cannot be

rebutted by either one or a combination of the factors set out in 14(2) [John Doe v. Ontario (Information and Privacy Commissioner) (1993), 13 O.R. (3d) 767].

In this case, the Police have cited the presumption in section 14(3)(b) (information compiled and identifiable as part of a law enforcement investigation). The Police submit:

The information contained in the records was compiled and identified as part of an investigation into a possible violation of law under the Criminal Code of Canada.

The personal information of the parties involved was compiled [the Police] during an investigation into allegations that an offence under the Criminal Code of Canada may have been committed. The information contained in these records was used to investigate offences and prosecute the offenders should charges be warranted.

Police investigation reports into the conduct of citizens are both confidential and privileged to the investigative body to maintain fairness and the presumption of innocence.

Order P-362 found that post-mortem forensic test results involving blood and urine analyses pertain to the medical condition of a deceased person and are exempt under section 14(3)(a). Therefore, we assert that the forensic laboratory reports fall within this section.

. . . . .

Although the appellant has an interest in the information, the other parties involved have a right to the protection of their privacy.

The requester's status as the biological mother of the deceased is not relevant in determining whether the requester should have access to the personal information of other individuals (Order P-679).

In my view, the withheld portions of the records, including the Forensic Laboratory Reports and Hospital Autopsy Report contain personal information of the appellant's son which relates to his medical history, diagnosis, condition, treatment or evaluation and, as such, this information falls within the scope of the presumption of an unjustified invasion of personal privacy at section 14(3)(a). In addition, the information at issue includes personal information relating to witnesses to the events in question, which information was compiled and is identifiable as part of an investigation into a possible violation of law. It is clear that the Police compiled these records to determine whether or not charges were warranted against one or more individuals under the Criminal Code. As a result, the section 14(3)(b) presumption applies to this information.

In the circumstances, I am satisfied that disclosure of any of the information withheld by the Police would constitute an unjustified invasion of the privacy of individuals other than the appellant. Further, it is clear to me, based on my review of the records, that the Police carefully considered each line of the records and provided the appellant with as much information pertaining to her as could reasonably be disclosed without unjustifiably invading the privacy of these other individuals.

In the circumstances, none of the factors at section 14(4) is applicable. Therefore, the withheld information qualifies for exemption under section 38(b) of the Act, subject to the possible application of the public interest override at section 16.

**PUBLIC INTEREST OVERRIDE**

As stated above, the appellant took the position during mediation that because the incident involved the CAS the withheld information should be disclosed because there was a compelling public interest in disclosure within the meaning of section 16 of the Act. The appellant did not, however, provide any representations in support of this assertion, and the records alone do not substantiate such a finding. In the circumstances, I find that the “public interest override” in section 16 has not been established.

**ORDER:**

I uphold the decision of the Police to withhold portions of the requested records from the appellant.

Original signed by: \_\_\_\_\_  
David Goodis  
Senior Adjudicator

\_\_\_\_\_ February 25, 2000