



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

# **ORDER MO-1315**

**Appeal MA-990280-1**

**Toronto Police Services Board**



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## **NATURE OF THE APPEAL:**

The appellant made a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) to the Toronto Police Services Board (the Police). The request was for access to a police report filed in connection with a sudden death.

The appellant is the Estate Trustee of the deceased individual, and indicated in the request that the report is necessary to settle the estate (section 54(a) of the Act). The appellant stated that the report had been requested by the insurance company as a prerequisite to payment of the accidental death benefit under the deceased's life insurance policy. The policy lists the estate as beneficiary.

The Police identified eight pages of records as responsive to the request. Partial access was granted to three of the eight pages. Access was denied to the entirety of the remaining five pages. In arriving at their decision, the Police relied on the provisions of section 14 of the Act (invasion of privacy).

The appellant has appealed the decision of the Police. This inquiry was initiated when a Notice of Inquiry was sent to the Police, asking for their representations on the issues raised in the appeal. The Police submitted representations, which were then forwarded to the appellant, who was also asked to submit representations. Once the appellant provided representations, these were in turn forwarded to the Police along with a request for further representations, which have now been received.

## **RECORD:**

The record at issue consists of a Sudden Death Report, contained on eight pages. During mediation of this appeal, the appellant indicated that she is not pursuing access to the parts of the record which relate to the persons canvassed in the building and to the two persons who initially provided first aid to the deceased. The bulk of pages 6, 7 and 8 of the record, therefore, are no longer at issue in this appeal.

## **CONCLUSION:**

I have concluded that the appellant has a right of access to the parts of the Sudden Death Report requested, except for portions which are covered by the exemption provided in section 38(b) of the Act in relation to the personal information of an affected person.

## **DISCUSSION:**

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

I will first consider whether, under section 54(a) of the Act, the appellant is entitled to exercise the rights of the deceased under the Act.

Section 54(a) 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 this section, the appellant can exercise the rights of the deceased under the Act if she can demonstrate that (a) she is the personal representative of the deceased, and (b) the rights she wishes to exercise relate to the administration of the deceased's estate. If the appellant meets the requirements of this section, then she is entitled to have the same access to the personal information of the deceased as the deceased would have had; her request for access to the personal information of the deceased under section 36(1) of the Act will be treated as though the request came from the deceased himself: see, for instance, Order M-927.

### ***Personal Representative***

The appellant has provided the Police and this office with a copy of the Certificate of Appointment of Estate Trustee Without a Will. The Police have indicated that they are satisfied that this documentation establishes that the appellant qualifies as the deceased's personal representative. In the circumstances, I am also satisfied that the first requirement under section 54(a) has been met.

### ***Relates to the Administration of the Individual's Estate***

The appellant has stated that access to the police report is necessary in order to settle the estate. One of the assets of the estate is a life insurance policy which lists the estate as its beneficiary. Under the terms of the policy, the accidental death benefit is not payable if the deceased died by suicide. The insurance company has required the appellant to seek the police report as a prerequisite to payment of the life insurance policy.

The Police state that during the course of dealing with this request, they determined that the appellant was seeking information which would show the deceased's intention at the time of his death. They state that information relating to that specific need was released to the appellant. However, they submit, the information which was not released falls outside of the scope of the administration of the estate as it does not relate to the "intention" of the deceased, nor any other aspect of the deceased's estate. The Police have, in effect, assessed whether each separate piece of information contained in the police report is relevant to an understanding of the deceased's intent at the time of this death and is therefore relevant to a determination as to whether or not his death was by suicide. Information which, in the opinion of the Police, does not bear directly on the question of the deceased's intent has been severed from the record.

In their representations, the Police have correctly stated that the rights of a personal representative under section 54(a) are *narrower* than the rights of the deceased person, in that the deceased retains his or her right to personal privacy except insofar as the administration of his or her estate is concerned: see Order M-1075. Other decisions of this office and the courts have confirmed the limited nature of the rights of personal representatives to obtain information relating to the deceased: see M-1048 and Adams v. Ontario (Information and Privacy Commission, Inquiry Officer) (1996), 136 D.L.R. (4<sup>th</sup>) 12 (Div.Ct.).

The limited nature of the rights of personal representatives arises from the requirement that the request for information be related to the administration of the deceased's estate. To put the issue another way, the appellant must demonstrate that "the purpose for which the information is sought is for the administration of that estate" (Adams v. Ontario, supra at p.18). In the case before me, there is no doubt that the purpose for which the Sudden Death Report is sought is for the administration of the deceased's estate. The very issue which is at the heart of the Sudden Death Report is the cause of the deceased's death. It is the outcome of this same issue which may also determine whether certain benefits under the deceased's life insurance policy will be paid to the estate.

It may be true that some of the information contained in the Report is of greater relevance to this central issue than other information in the Report. Not surprisingly, the Report contains a variety of facts arising out of the investigation of the deceased's death, including information about his state of mind in the days before his death, information about the removal of the body, and information about medical, law enforcement and other officials who had some involvement in the matter. In severing portions of the Sudden Death Report based on their relevance to the issue of the deceased's intentions at the time of his death, the Police have in a sense made a pre-judgement of what information may be required by the personal representative in establishing entitlement under the insurance policy.

In my view, this is neither required by the Act, nor a reasonable and sensible approach to the issue. Once the appellant has established that the Sudden Death Report is reasonably related to the administration of the estate, then the next step is to determine whether the Report is information to which the deceased would have been entitled. If so (and I have concluded as much below), then the personal representative is entitled to have access to the Report, subject to the exemptions under the Act. It would be reasonable to expect, and this is confirmed by my review of it, that all of the information in the Report relates in some way to the investigation of the deceased's death. The Police have stated in their submissions that the focus of the investigation was to establish the factual cause of the death, and to endeavour to rule out causes such as foul play. Unless portions of the Report are obviously irrelevant to this investigation, there is no good reason under the Act to apply a severance exercise at this stage. To do so would introduce a layer of complexity to these issues which is not required by the Act. As well, it would amount to little more than speculation as to the eventual use and usefulness of the information. The appellant is in the better position to assess what information is required in order to protect the interests of the estate. It may simply not be possible for the Police to predict whether an apparently innocuous fact contained in the Report may give rise to further investigation, aid in further investigation, or may reveal something which is important to the issues under the insurance policy.

I conclude, therefore, that the request for access to the Sudden Death Report is for the purpose of administering the estate of the deceased, and that the Report as a whole is relevant to this purpose. Relying as well on my findings below that the information in the Report is information to which the deceased would have been entitled, I conclude that the Police are not entitled to sever portions of that Report on the basis of its opinion that some portions have a greater impact on the administration of the estate than other portions.

## **PERSONAL INFORMATION**

The Police have submitted that portions of the Report should not be disclosed as they contain the personal information of the deceased and of the affected party. I conclude, for the reasons below, that the appellant is not precluded from access to the Report because of the inclusion of personal information of the deceased. Moreover, since the appellant is, because of the application of section 54(a), exercising the rights of the deceased, it is precisely *because* the Report contains the personal information of the deceased that the appellant has the right to have access to it.

Under section 2(1) of the Act, "personal information" is defined as 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. Personal information includes views or opinions expressed by an individual.

There is no doubt that the Report contains personal information. The Police identify that since the appellant is not seeking information about persons who live in the deceased's apartment building, and persons who gave first-aid to the deceased, the information that remains at issue contains the personal information of the deceased and an affected person. With respect to the deceased, the Police submit that the information contained in the Report was completed as a result of a call for assistance regarding the now deceased. The information contained in the records, it is said, can be readily identifiable as being compiled as part of the investigation into the circumstances of his death, and therefore becomes the personal information of the deceased.

The appellant relies on Order M-50 to argue that some elements of the Report, containing information of a factual nature such as the measurements in the deceased's apartment, are not personal information. Having reviewed that order, I am satisfied that it does not assist, in that the issue in Order M-50 was the application of section 14(3)(a) of the Act, and not the definition of "personal information."

Based on my review of the record, I accept that the information contained in the Sudden Death Report is the personal information of the deceased. In PO-1715, which also related to a Sudden Death Report, Assistant Commissioner Tom Mitchinson stated:

All of the records at issue in this appeal were created in the context of the investigation into the death of the son. As such, I find that they are clearly "about" the son and, therefore, contain his personal information.

I am also satisfied that portions of the Report also contain the personal information of an affected person. This information, among other things, summarizes the statement given by the affected person to the Police during their investigation of the death, and includes the name and address of this affected person. The Police sought the affected person's consent to disclose this information. Correspondence to this person was however returned to the Police by Canada Post as undeliverable.

## **INVASION OF PRIVACY**

### **Personal Information of the Deceased**

The Police have submitted that the appellant has failed to provide grounds to establish that the release of the personal information of the deceased, beyond that which has already been released, is justified.

As I have indicated, once the requirements of section 54(a) have been established, a personal representative is entitled to exercise the rights of the deceased under the Act. The result of this is that if the information which is sought by the personal representative is information to which the deceased would have been entitled, there can be no objection. Section 36(1) of the Act gives individuals the right to access their own personal information. Since I have concluded that the appellant has met the requirements of section 54(a), the fact that this Report contains personal information of the deceased is not a valid reason for refusing to provide the Report. Indeed, it is the very basis for the access rights of the personal representative under section 36(1).

The Police submit, consistent with their arguments discussed above, that some of the personal information of the deceased in the Report consists of personal information which is not necessary to the administration of the estate. As I have indicated, I am satisfied that the Sudden Death Report ought to be viewed as a whole, that all of the information in that Report is reasonably linked to the investigation of the deceased's cause of death, and that there is nothing in the Report which is obviously unrelated to that general issue. In the circumstances, I see no reason to withhold any of the personal information of the deceased which is contained in that Report.

### **Personal Information of the Affected Person**

Different considerations must be taken into account in assessing whether to release those portions of the Report which contain the personal information of the affected person. Earlier, I indicated that the Report contains the personal information of the affected person in that it, among other things, provides a summary of the statement given by the affected person to the Police. Section 38 of the Act provides, in part:

A head may refuse to disclose to the individual to whom the information relates personal information,

(b) if the disclosure would constitute an unjustified invasion of another individual's personal privacy;

The combined effect of section 38(b) and section 54(a) is that where a record contains the personal information of both the deceased and other individuals and the institution determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the institution has the discretion to deny the personal representative access to that information.

Section 38(b) of the Act introduces a balancing principle. The institution must look at the information and weigh the personal representative's right of access to the personal information of the deceased against another individual's right to the protection of their privacy. If the institution determines that release of the information would constitute an unjustified invasion of the other individual's personal privacy, then section 38(b) gives the institution the discretion to deny access to the personal information of the deceased.

In determining whether the exemption in section 38(b) applies, sections 14(2), (3) and (4) 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. In the case before me, the Police have relied on section 14(3)(b), which provides:

A disclosure of personal information 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 submit:

The focus of a law enforcement investigation into a sudden death is twofold: to endeavour to establish the factual cause of the event, and further, to endeavour to rule out any other possible causes (i.e., foul play). Although a decision with respect to the cause of death lies with the Coroner, the police investigation plays a key role in the determination. The fact that no criminal proceedings were commenced by the Police does not negate the applicability of section 14(3)(b). This section only requires that there be an investigation into a possible violation of law.

The Police also rely on other decisions of this office which have found sudden death investigations to fall within the parameters of a law enforcement investigation for the purposes of section 14(3)(b).

Previous decisions have stated that the absence of charges does not negate the application of section 14(3)(b): see, for instance, PO-1715. Here, the Police have apparently ruled out any possibility of criminal charges. Notwithstanding this, I am satisfied that section 14(3)(b) applies in that the information in the Report was compiled and is identifiable as part of an investigation into a possible violation of law. It must be presumed that the disclosure of the personal information of the affected person would be an unjustified invasion of personal privacy.

A finding that section 14(3)(b) applies does not necessarily end the matter, for section 38(b) grants the Police a discretion to disclose personal information of an affected person which is contained in a record also containing the personal information of the requester (or, as in this case, the deceased), *even* if it would be an unjustified invasion of that affected person's privacy. It has been said that the exercise of discretion under section 38(b) to disclose personal information of an individual other than the requester would be rare; however, the decision is a discretionary one that must be made by balancing the competing interests present in a particular fact situation: see Order M-532.

I therefore turn to a consideration of whether the Police have properly exercised their discretion under section 38(b) of the Act, in deciding against disclosing portions of the Report which contain the personal information of the affected person.

The Police state that they determined that the personal information of the affected person had no value in terms of the settlement of the insurance policy, and that this was a factor weighing against providing access

to the information. The Police also considered the fact that the consent of the affected person was sought but unable to be obtained. Further, the Police gave weight to the implied element of trust held by members of the public in giving information during the course of law enforcement investigations. It is submitted that the statement-taking process would be critically compromised if witnesses felt compelled to give that statement in a guarded manner for fear of an institution favouring release over the protection of their privacy.

Earlier, I expressed reservations about the wisdom of attempting to anticipate the value of the information sought to the settlement of the estate, and I rejected the approach taken by the Police in severing portions of the Sudden Death Report on this basis. However, where the interests of an affected person are at issue, I accept that this is a factor which the Police may properly take into account in deciding on the exercise of their discretion under section 38(b). The other factors are reasonable factors to take into account as well and, on the whole, I am satisfied that the Police have properly exercised their discretion against disclosure of the affected person's personal information.

I therefore uphold the decision of the Police to withhold the portions of the Report which contain the personal information of the affected person.

**ORDER:**

1. I order the Sudden Death Report to be released to the appellant in its entirety, with the exception of the portions which contain the personal information of the affected person, and with the exception of the portions containing the information of other persons (for which the appellant has withdrawn her request for access). For greater clarity, pages 1, 2 and 3 are to be disclosed in their entirety, except the portions which contain the personal information of the affected person. Pages 4 and 5 are to be disclosed in their entirety, except the portion containing the personal information of the affected person. Pages 6, 7 and 8 are to be disclosed except for the portions containing information about the individuals canvassed in the apartment building and the individuals administering first aid to the deceased. I have included with this order a copy of the Report, on which I have highlighted the portions which are exempt from disclosure.
2. I order disclosure to be made by sending the appellant a copy of the Report, excluding the exempted portions, by no later than **August 2, 2000**, but not before **July 26, 2000**.
3. In order to verify compliance with the provisions above, I reserve the right to require the Police to provide me with a copy of the material sent to the appellant.



Original signed by: \_\_\_\_\_

\_\_\_\_\_ June 27, 2000

Sherry Liang  
Adjudicator