



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

ORDER MO-1455

Appeal MA_000353_1

Toronto Police Services Board

NATURE OF THE APPEAL:

This is an appeal from a decision of the Toronto Police Services Board (the "Police") under the *Freedom of Information and Protection of Privacy Act* (the *Act*). The requester, the father of the deceased person, had sought access to "any and all information" regarding his son's sudden death.

The Police located 32 responsive records and granted access to 7 records, in their entirety. The Police have provided this office with an index identifying 81 pages of records and the exemptions upon which it relied for each record. The Police denied complete access to 8 records, and partial access to 17 records, based on the exemptions at sections 8 (law enforcement), 9 (relations with other governments) and 14 (personal privacy) of the *Act*.

During mediation of this appeal, the appellant agreed that he was not interested in the "police codes" or information that was deemed by the Police to be "non-relevant". As such, section 8(1)(l), and the following records or portions of records, are no longer at issue: record 2, record 7 (pages 12 and 19), record 10 (page 26), record 12 (page 30), record 14, record 16, record 18, record 21 (page 42) and record 31 (page 75).

I sent a Notice of Inquiry to the Police initially, setting out the facts and issues in this appeal. The Police returned representations, the non-confidential portions of which were shared with the appellant. In their submissions, the Police state that they are no longer relying on the application of section 8(2)(a) to record 26 (pages 63, 64 and 65).

The appellant also returned submissions.

RECORDS:

There are 25 records remaining at issue in this appeal consisting of police occurrence reports, witness statements, photographs, police officers' notes, a CPIC inquiry, and medical reports. The witness statements include an account of how these individuals came to be present at the scene, or information which they provided to the Police concerning the disappearance and/or sudden death of the appellant's son.

DISCUSSION:

RIGHT OF ACCESS BY A PERSONAL REPRESENTATIVE

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 he is able to:

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

Personal Representative

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

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.

...

... 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".

In order for the appellant to establish that he is the deceased person's personal representative for the purposes of section 54(a), he must provide evidence of the authority to deal with his son's estate.

In his letter of request to the institution, the appellant stated that he was writing as the "father and executor" of the deceased person. However, he has not provided evidence, such as letters of probate, letters of administration, or ancillary letters probate under the seal of the proper court", proving that he is the executor of his son's estate (Orders MO-1075, MO-1375, PO-1849). In the absence of supporting evidence, the appellant has not established that he is the deceased person's representative.

Therefore, I find that the first requirement under section 54(a) has not been met.

PERSONAL INFORMATION

Section 2(1) of the *Act* defines “personal information”, in part, as recorded information “about an identifiable individual”.

The records all pertain to the investigation into the disappearance and subsequent death of the appellant’s son, and therefore are “about an identifiable individual”. Disclosure of the information contained in the records would reveal the identities of the individuals who provided statements to the Police during the investigation. In this case, disclosure would also reveal "other personal information about the individuals", including the appellant, within the meaning of section 2(1) of the *Act*. The records contain the names, addresses, telephone numbers, and dates of births of these individuals, as well as their opinions and/or views. This information is properly considered personal information as defined in the *Act* [paragraphs (a), (b), (d), (g) and (h)] .

Section 2(2) provides that personal information does not include information about an individual who has been dead for more than 30 years. Because the deceased died in the year 2000, section 2(2) has no application in this situation.

INVASION OF PRIVACY

Section 36(1) of the *Act* provides individuals with a general right of access to records which contain their own personal information. Section 38, however, provides restrictions to access which they may have to records containing the personal information of others.

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 another individual’s personal privacy, the institution has the discretion to deny the requester access to that information.

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) [Order P-1456, citing *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767].

The Divisional Court has stated that 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 a compelling public interest exists in the disclosure of the record in which the personal information is contained which clearly outweighs the purpose of the section 14 exemption.

In this appeal, the Police have relied on the presumption in section 14(3)(b) in conjunction with section 38(b). These sections read:

38. 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;

14(3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

(b) 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 documents at issue are 81 pages of records prepared by police officers who were involved in a Missing Person/Sudden Death investigation conducted by the Toronto Police Service. All the information contained within the records was compiled as part of the police investigation into the circumstances surrounding the disappearance and ultimate of the appellant's death. These records contain the personal information of the deceased, the appellant and numerous third parties.

The appellant submits that he seeks the requested records to better understand the facts surrounding his son's untimely death. He states, "As executor, I feel it is my duty to offer not only solace but also a sense of closure to the many people who feel this deeply tragic loss."

In the case before me, the occurrence reports, police officers' notes and photographs were compiled by the Police in their investigation of the disappearance and death of the appellant's son. Similarly, witness statements were collected and medical reports were prepared as part of the investigation. While it is not apparent whether any charges were laid as a result of the investigation, I am satisfied that the information was compiled and is identifiable as part of an investigation into a possible violation of law. Prior decisions have stated that the absence of charges does not negate the application of section 14(3)(b) (see, for instance, Orders P-1225 and PO-1715). Therefore, because of the application of section 14(3)(b), it must be presumed that the disclosure of the personal information contained in these records is an unjustified invasion of personal privacy. Having found that section 14(3)(b) applies, as stated earlier, I cannot consider whether any of the

circumstances set out in section 14(2) might justify disclosure of the information in this case.

Based on the above, I find that the disclosure of the records at issue would constitute an unjustified invasion of the personal property of the deceased and other individuals mentioned in the records. Although some small portions of the records contain only the appellant's personal information, given that the appellant has emphasized he seeks only information concerning his deceased son, I will not order the Police to disclose this information.

From the materials before me, I find nothing improper in the Police's exercise of discretion in withholding the exempt information from the appellant.

COMPELLING PUBLIC INTEREST

Section 16 may operate to permit disclosure of a record even if a provision in section 14 would otherwise prohibit such disclosure. Section 16 states:

An exemption from disclosure of a record under sections 7, 9, 10, 11, 13 and **14** does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption. [emphasis added]

In Order P-984, former Adjudicator Holly Big Canoe discussed the meaning of section 16, as follows:

In my view, the public interest in disclosure of a record should be measured in terms of the relationship of the record to the *Act's* central purpose of shedding light on the operations of government. In order to find that there is a compelling public interest in disclosure, the information contained in a record must serve the purpose of informing the citizenry about the activities of their government, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices.

There is nothing in the material before me demonstrating a compelling **public** interest which outweighs the protection of personal privacy. While the appellant's request is worthy and deserving of support, it is essentially a private matter.

At present, the *Act* permits the Police to deny access to the records. Adjudicator Sherry Liang spoke to this issue in Order MO-1230, in which parents of the deceased requested access to information on the sudden death of their 17 year old daughter. She stated:

The request of the appellants is not unusual. Other decisions of this office have dealt with attempts by the bereaved relatives of a deceased person to gain access to information about the circumstances of the death. It is not

uncommon for such requests, as is apparently the case here, to be made essentially for the purpose of greater understanding of the tragic event.

My role is to interpret and apply the provisions of the *Act*, which governs the release of information by, among others, the Police. In reviewing the decision of the Police, I am also governed by the *Act*, and I cannot substitute my own views on the fairness and merits of the appellants' request where the *Act* provides a clear direction.

The Police provided the appellant with a copy of the 1999 *Annual Report* of the Information and Privacy Commissioner, in which the Commissioner recommended statutory changes that would recognize the needs of grieving families, and remove restrictions from the *Act* preventing them from having greater access to information about the death of a loved one. Part of that report states:

Of the various types of appeals processed by the IPC, those involving a request for information about a deceased family member are among the most sensitive. Requests of this type are submitted to institutions (most often to local police forces or the Ontario Provincial Police) by immediate family members, or their representatives, in order to obtain information surrounding the circumstances of the relative's death.

Except in certain limited circumstances, institutions must deny relatives access to this information because disclosure is presumed to be an unjustified invasion of the deceased's personal privacy under the provincial and municipal Acts.

....

A statutory amendment to address this sensitive and compelling issue is clearly required, and would be supported by a broad cross section of stakeholders: requesters and appellants; Freedom of Information and Privacy Co-ordinators in both the provincial and municipal sectors, including the police community; professionals in the field of grief counselling; and the IPC.

Specific language for a new subsection for section 21 (section 14 of the municipal *Act*) is included in the *Commissioner's Recommendations* section, which follows this review of key issues.

It may be that in the future, the *Act* will be amended to reflect the recommendations of the Commissioner. Until such time, the *Act* permits the Police to deny access to the records at issue.

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Dora Nipp
Adjudicator

July 18, 2001 _____