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

ORDER MO-1998

Appeal MA-040279-2

City of Toronto

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NATURE OF THE APPEAL:

The City of Toronto (the City) received an eight-part request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) seeking information relating to the death of the requester's son (the deceased). The request reads as follows:

1. Provide the incident report from the fire personnel who attended [a specified address] on [a specified date].

2. Were there fire personnel trained in CPR?

3. Who checked [the deceased's] vital signs and what was their assessment?

4. Provide the protocol(s) for fire fighters who arrive on a scene where there is an unconscious person.

5. Were the fire fighters on the scene at [the specified address] trained to use a defibrillator? Was there a defibrillator available?

6. Who controlled the access to assess [the deceased's] vital signs, the police or the fire fighters? What is the protocol(s) for checking vital signs when both the police and the fire fighters are present?

7. Provide the time the 911 call was received, the time the fire crew was notified and the time that the fire crew arrived at [the specified address].

8. Provide the recorded calls from the Toronto Fire Department to the Toronto EMS between 07:19 to 07:33 on [specified date].

The City granted partial access to one responsive record, an Emergency Incident Report responsive to part 1 of the request. The City applied the exemption found in section 14(1) (invasion of privacy) of the *Act* to deny portions of that record. The City also provided information in the form of answers to parts 2, 3, 5, and 6, of the request. In response to part 4, although the City advised that there is no protocol document per se, it provided the appellant with a document entitled "Toronto Fire Services and Sunnybrook and Women's College Health Services Centre Defibrillation 2000 Recertification" which the City advised is the document used by fire personnel for their training and evaluation. For part 7 of the request, the City advised that the requested information can be found in the Emergency Incident Report that was partially disclosed to the appellant. With respect to part 8 of the request, the City provided neither an answer nor records in response.

The requester, now the appellant, appealed the City's decision.

During mediation, the City advised the mediator that no records exist in response to part 8 of the request. After conducting a search, the City advised that tapes of the recorded calls described in part 8 would have been erased after being retained for a specified period of time.

Also during mediation, the appellant advised that, in addition to the formal Emergency Incident Report requested in part 1 of his request, he was also asking for any original, hand written reports or notes taken by Fire Department personnel at the scene. The appellant is of the position that such hand written notes must have been taken at the scene and that they were subsequently used to complete the formal, computer generated, Emergency Incident Report to which he received partial access. After conducting a search, the City advised that hand written reports or notes taken at the scene do not exist, and, even if they did exist, that it was the City's position that the information appears not to fall within the scope of the appellant's request because he specifically asked for the "incident report" itself.

The appellant subsequently removed from the scope of the appeal the Fire Department staff personnel numbers found on page 3 of the Emergency Incident Report and the Fire Department officer's user number that had been withheld from page 2 of the Emergency Incident Report. This information is therefore no longer at issue. Remaining at issue are the portions of the record that have been severed on pages 1 and 2 under the headings "Equipment Used", "Patient Assessment and Treatment Provided" and "Officer's Report" (with the exception of the Officer's user number).

The mediator discussed the application of section 54(a) of the *Act* (exercise of rights of deceased) with the appellant and outlined the requirements to be fulfilled for that section to apply. This issue was not resolved at mediation.

The City located an audio-tape of a 911 call relating to the incident in question and provided a copy, in its entirety, to the appellant along with a copy of a one-page Tape Analysis Log Sheet. These items are not, however, responsive to part 8 of the appellant's request.

As mediation did not resolve all of the outstanding issues, this appeal was transferred to the adjudication stage. This office began the adjudication stage by sending a Notice of Inquiry to the appellant, initially, inviting representations specifically on the application of section 54(a), the scope of the request and whether the City's search for responsive records was reasonable. The appellant was not asked at that time to make submissions on the application section of 14(1) to the information at issue. The appellant submitted representations and agreed to share them in their entirety with the City. This office then sent a Notice of Inquiry to the City inviting representations on all issues. The City provided representations in response. The appellant was provided with a further Notice of Inquiry, along with a copy of the representations submitted by the City and asked to respond to all of the issues raised in the City's representations, including the section 14(1) exemption. The appellant did not provide reply representations.

RECORD/ISSUES:

The record at issue is an "Emergency Incident Report" from Toronto Fire Services. The information at issue in the record has been severed from Section 1 on page 1 under the heading "Equipment Used", Section 2 on page 1 under the heading "Patient Assessment and Treatment Provided" and Section 6 on page 2 under the heading "Officer's Report" (with the exception of

the Officer's user number). The denial of access to this information requires the consideration of whether section 54(a) applies, and whether the information is exempt under section 14(1).

There is a further issue as to whether the City conducted a reasonable search for responsive records.

DISCUSSION:

PERSONAL REPRESENTATIVE

General principles

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 deceased's right of access under the *Act* if he can demonstrate that:

- he is the personal representative of the deceased, and
- the right he wishes to exercise relates to the administration of the deceased's estate.

If the appellant meets the requirements of this section, then he is entitled to have the same degree of access to the personal information of his son as his son would have had when alive, and the request would be treated as though it came from the deceased himself [Orders M-927; MO-1315].

Personal representative

The term "personal representative" means executor, administrator or administrator with the will annexed with the power and authority to administer the deceased's estate [*Adams v. Ontario (Information and Privacy Commissioner)* (1996), 136 D.L.R. (4th) 12 at 17-20 (Ont. Div. Ct.)]. The term "estate trustee" is also used to describe such an individual [Order MO-1449 and rule 74 of the Rules of Civil Procedure under the *Courts of Justice Act*].

Generally, to establish that he is the deceased's personal representative, the requester should provide written evidence of his authority to deal with the estate of the deceased, including a certificate of appointment of estate trustee [Order MO-1449]. A will alone may not be sufficient [Order MO-1365].

The appellant has provided this office and the City with a copy of a Certificate of Appointment of Estate Trustee Without a Will, issued by the Registrar of the Ontario Superior Court of Justice, naming the appellant as the trustee of the deceased's estate. The City accepts, and I am satisfied, that the appellant is a "personal representative" within the meaning of section 54(a) of the *Act*.

Relates to the administration of the estate

In Order M-1075, former Assistant Commissioner Tom Mitchinson reviewed the scope of access rights of a personal representative under section 54(a):

> The rights of a personal representative under section 54(a) are narrower than the rights of a deceased person. That is, the deceased retains his or her right to personal privacy except insofar as the administration of his or her estate is concerned. The personal privacy rights of deceased individuals are expressly recognized in section 2(2) of the *Act*, where "personal information" is defined to specifically include that of individuals who have been dead for less than thirty years.
>
> In order to give effect to these rights, I believe that the phrase "relates to the administration of the individual's estate" in section 54(a) should be interpreted narrowly to include only records which the personal representative requires in order to wind up the estate.

In other words, to satisfy the second requirement of section 54(a), the appellant must demonstrate that the request "relates to the administration of the estate" and that he is seeking access to the records for the purpose of administering the estate [Order MO-1315; *Adams v. Ontario (Information and Privacy Commissioner)*].

Requests have been found to "relate to the administration of the estate" where the records are:

- relevant to determining whether the estate should receive benefits under a life insurance policy [Order MO-1315]
- relevant to the deceased's financial situation and allegations of fraud or theft of the deceased's property [Order MO-1301]
- required in order to defend a claim against the estate [Order M-919]

Requests have been found *not* to "relate to the administration of the estate" where the records are:

- sought to support a civil claim by family members under the *Family Law Act*, where any damages would be paid to the family members and not to the estate [Order MO-1256]

- sought for personal reasons, for example, where the requester "wishes to bring some closure to … tragic events" [Order MO-1563]

The appellant has not made any formal representations on whether he is seeking access to the records for the purpose of administering the estate as required by the second requirement of section 54(a).

The City submits that the appellant has not demonstrated how the information requested pertains to the administration of the deceased's estate. The City submits:

> As noted in Order MO-1563, seeking access to personal information in order to bring closure to tragic events is not a purpose that "relates to the administration of the estate".

In Order MO-1715, Adjudicator Bernard Morrow considered a request made by the same appellant for a copy of a police report concerning his son. In that order, Adjudicator Morrow found that there was no evidence to support the appellant's assertion that the information was required in order to prove an insurance claim or that the requested records were required to undertake the administration of the deceased's estate. In Order MO-1715, Adjudicator Morrow stated:

> I appreciate that the appellant wishes to bring some closure to these tragic events and I can understand that he feels that gaining access to the records at issue will help to facilitate this difficult process. However, in my view, the appellant has not established that the information contained in *these particular* records is required to undertake the administration of the deceased's estate. In particular, the appellant has not provided evidence to support his assertion that the information is required in order to prove an insurance claim. Based upon the material before me, I cannot find that the appellant' s request for access to these records "relates to the administration" of the deceased's estate, within the meaning of section 54(a). I, therefore, find that the appellant's submissions do not satisfy the second part of the test in section 54(a).

The circumstances with respect to the appellant's request for information in the current appeal appear to be similar to, if not identical to, the circumstances with respect to his request for information addressed in Order MO-1715. In the current appeal, the appellant has provided me with no additional information or further explanation as to how the information requested in this appeal differs from that at issue in the previous appeal and, specifically, whether it is required in order to administer the deceased's estate. In my view, the information provided by the appellant is insufficient to support a finding that the request for records relates to the administration of the deceased's estate. Therefore, I do not find that the second requirement of section 54(a) has been met.

Accordingly, I find that section 54(a) does not apply in the circumstances of this appeal.

PERSONAL INFORMATION

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

> (b) information relating to the education or the *medical*, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved; [emphasis added]

The City submits:

> [T]he information severed from the Emergency Incident Report provided to the appellant is personal information within the meaning of paragraph (b) of subsection 2(1) of [the *Act*]. In providing the appellant with a copy of the Emergency Incident Report, the City severed information found in fields that: identify the equipment used to treat the patient; describe assessments of the patient and treatment provided; contain employee personnel numbers (the latter being no longer at issue).
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> The City submits that injuries of an individual as described in the Emergency Incident Report are the personal information of the patient. If the equipment or treatment is disclosed, the City submits that the nature of the injuries will be apparent for all persons.
>
> If the City is required, under [the *Act*], to disclose the treatment and/or the equipment used to treat a patient, then a trained person may reasonably deduce the nature of the injuries sustained by the patient. The City submits that the definition of "personal information" must be interpreted broadly to ensure that the information is not disclosed that may reasonably identify an individual's injuries.

Based on my review of the record, there is no doubt that it contains the personal information of the deceased. The severed portions of the record contain the details of the equipment used on the deceased by the Toronto Fire Service, the patient assessment and the treatment provided as well as a brief report by the reporting office detailing the actions of crew members in response to the call. Accordingly, the information qualifies as the personal information of the deceased within the meaning of paragraph (b) of section 2(1) of the *Act*.

The record does not contain any of the personal information of the appellant.

INVASION OF PRIVACY

General principles

Section 14(1) is a mandatory exemption that protects the personal information of individuals other than the requester. Where a requester seeks the personal information of another individual, section 14(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) through (f) of section 14(1) applies.

The City submits that disclosure of the severed information in the Emergency Incident Report would constitute an unjustified invasion of personal privacy within the meaning of subsection 14(1)(f). Section 14(1)(f) reads:

> A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,
>
> > if the disclosure does not constitute an unjustified invasion of personal privacy.

Section 14(1)(f) is an exception to the mandatory exemption at section 14(1) regarding personal information. In order to establish that section 14(1)(f) applies, it must be shown that disclosure of the personal information would **not** constitute an unjustified invasion of personal privacy [see, for example, order MO-1212].

In applying section 14(1)(f), 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.

Section 14(2) lists criteria for the institution to consider in making a determination as to 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(3) lists the types of information the disclosure of which is *presumed* to constitute and unjustified invasion of personal privacy. Section 14(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

If none of the presumptions in section 14(3) applies, the institution must consider the application of the factors listed in section 14(2), as well as all other considerations that are relevant in the circumstances of the case.

If a presumption listed in section 14(3) has been established, it cannot be rebutted by either one or a combination of the factors set out in section 14(2). A presumption can, however, be overcome if the personal information is found to fall under section 14(4) of the *Act* or if a finding is made under section 16 of the *Act* that a compelling public interest exists in the disclosure of

the record that clearly outweighs the purpose of the section 14 exemption [*John Does v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767].

The City takes the position that the "presumed unjustified invasion of privacy" of section 14(3)(a) applies in the circumstances of this appeal. None of the other presumed invasions listed in section 14(3) appears to be relevant to the matter before me.

The City submits:

> [P]ursuant to subsection 14(3)(a), disclosure of the information would constitute and unjustified invasion of privacy as the information relates to a medical treatment or evaluation. The information at issue describes the patient's medical condition, evaluation and treatment including possible reasons for the condition.
>
> In Order PO-1735, the Ministry of the Solicitor General and Correctional Services denied the appellants access to an ambulance report concerning their deceased daughter. In that appeal, the Ministry submitted that disclosure of the record was presumed to be an unjustified invasion of the daughter's privacy under subsection 21(3) of the *Freedom of Information and Protection of Privacy Act* (the provincial equivalent of subsection 14(3)(a) of [the *Act*]). In that appeal, Senior Adjudicator David Goodis found that the information was exempted under the provincial equivalent of subsection 14(1) of [the *Act*].
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> Similarly, in Order MO-1429, Adjudicator Dora Nipp considered a request for access to an ambulance call report in the custody and control of the City of Toronto. The appellant were parents of a deceased individual who was the subject of the ambulance report. Adjudicator Nipp held that the information qualifies as information relating to the daughter's medical diagnosis, condition or evaluation and concluded that the information requested:
>
> > falls within the section 14(3)(a) presumption of an unjustified invasion of privacy . Since none of the section 14(4) factors apply in the circumstances, I find that this information is exempt under section 14(1) of the *Act* and disclosure of the record would constitute an unjustified invasion of personal privacy.
>
> In this appeal, the information severed from the Emergency Incident Report is the same as some of the information found in a typical ambulance report. The City submits that information pertaining to the treatment, evaluation or medical equipment used to treat a patient qualifies as information related to an individual's medical diagnosis, condition or evaluation within the meaning of subsection 14(3)(a) of [the *Act*]. In *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3D) 767, the Ontario Divisional Court held that once a presumption against disclosure has been established, it cannot be rebutted

> by either one or a combination of factors set out in subsection 14(2) of [the *Act*]. A presumption under subsection 14(3) can be overcome if the personal information at issue falls under subsection 14(4). Since none of the factors under subsection 14(4) apply, the City submits that the disclosure of this information is presumed to be an unjustified invasion of privacy.

The appellant chose not to respond to the City's representations on the application of section 14(3).

Previous orders issued by this office have addressed the application of section 14(3)(a) to reports created by emergency response teams responding to an incident. For example, as noted by the City in its representations, in Order PO-1735 the Ministry of the Solicitor General and Correctional Services denied the appellants access to an ambulance report concerning their deceased daughter. In that appeal, it was submitted that disclosure of the record was presumed to be an unjustified invasion of the daughter's privacy under the provincial equivalent of section 14(3)(a). The categories listed in the Ambulance Call Report, which were considered by Senior Adjudicator David Goodis, included "Ambulance Administration, Patient identification, Clinical Information, Hospital Administration, Remarks and/or procedures continued, Final Assessment by Crew, [and] Ambulance Administration". Senior Adjudicator Goodis found that much of the information in the "Clinical Information", "Hospital Administration" and "Final Assessment by Crew" categories, and some of the information in the "Ambulance Administration" category, qualified as information relating to the daughter's medical diagnosis, condition or evaluation, and therefore found that that information fell within the provincial equivalent of section 14(3)(a) as an unjustified invasion of personal privacy.

Having reviewed the record, I find that the personal information at issue in the record consists of medical information about the deceased which relates to the evaluation and assessment of, as well as the treatment provided to, the deceased. As such, this information falls within the scope of the presumption of an unjustified invasion of personal privacy at section 14(3)(a).

Since, in the circumstances of this appeal, none of the section 14(4) factors apply, and the public interest override in section 16 has not been raised by the appellant, I find that all of the undisclosed information is exempt under section 14(1) of the *Act* as disclosure of the information contained in the record would constitute an unjustified invasion of personal privacy.

REASONABLE SEARCH

General Principles

In appeals involving a claim that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 17 [Orders P-85, P-221, PO-1954-I].

Where a requester provides sufficient detail about the records that he or she is seeking and the institution indicates that further records do not exist, it is my responsibility to ensure that the institution has made a reasonable search to identify any records that are responsive to the request. Although an appellant will rarely be in a position to indicate precisely which records have not been identified in an institution's response to a request, the appellant must, nevertheless, provide a reasonable basis for concluding that such records may, in fact, exist.

A number of previous orders have identified the requirements of a reasonable search [Orders M-282, P-458, P-535, M-909, PO-1744 and PO-1920]. The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, in order to properly discharge its obligations under the *Act*, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records [Order P-624]. A reasonable search has been described as one in which an experienced employee expending reasonable effort conducts a search to identify any records that are reasonably related to the request [Order M-909].

Therefore, if I am satisfied that the search carried out by the City was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order the institution to conduct further searches.

Representations

The City submits that it has met its obligation under the *Act* and has conducted a reasonable search for records responsive to the request at issue in this appeal. In support of its representations, the City also submitted three affidavits from the individuals who conducted the various searches. These affidavits are sworn by the Division Chief of the Communications Centre at the Toronto Fire Services Division, the Incident Reporting Systems Analyst at the Toronto Fire Services Division, and the Manager of the Professional Standards Office at the Emergency Medical Services Division.

In its representations, the City submits:

> Upon receipt of the request, the City's Corporate Access and Privacy Office determined that there was no need to clarify the appellant's original request, as the request was clear. Staff in the Toronto Fire Services Division (TFS) and the Emergency Medical Services Division (EMS) were requested to search for the responsive records. In each division, staff knowledgeable of how the requested records are maintained and of how the information is recorded conducted a search for the requested records. In addition to searching relevant files and recordings, staff also contacted persons who attended to the site of the emergency to determine whether those persons retained notes pertaining to the emergency in question. Inquiries were made in various sections within the divisions in an attempt to locate all of the records. The attached affidavits provide details of the searches conducted.

In addition to the information requested in the appellant's original request, during mediation the appellant also asked for the original hand written report/notes prepared by Fire Services at the scene of the emergency. As discussed above, it is the City's position that such records are not responsive to the original request. Nevertheless, the City's Fire Services also conducted a search for these records.

As explained in the attached affidavits, the City was able to locate all records requested by the appellant with the exception of the following:

- a recording of any "calls from the Toronto Fire Department to the Toronto EMS between 07:19 to 07:33 on [specified date];" and,
- hand written note of personnel with the Toronto Fire Services Division.

As is clear from reviewing the attached affidavits, staff from both the EMS Division and the TFS Division searched for recordings of all calls related to an emergency incident at [specified address] on [specified date]. The EMS Division located a re-recording of all calls received and sent out on the same date. After listening to the recordings made on the date in question, both divisions were unable to locate the recordings sought by the appellant. The City submits that a reasonable search was conducted for these records.

In a letter dated January 4, 2005, the City advised the requester that an additional search by the EMS Division has found a recording of a person making the 911 telephone call that reported the emergency incident of [specified date] at [specified address]. A copy of the recording and a Tape Analysis Log Sheet was enclosed.

Furthermore, in an effort to provide as much information as possible, in a letter dated April 25, 2005, the City advised the appellant that a search by staff of Toronto Fire Services had found several short audio records regarding the [specified date] emergency incident at [named address]. Although the appellant did not request this information, the City granted full access to the audio records and partial access to the transcript records created by TFS staff. Access was denied pursuant to subsection 14(1) only to those portions of the transcript records that contained employee numbers.

In addition to providing records to the appellant, the City also went beyond the scope of [the *Act*] and created a record in order to respond to the appellant's questions.

The City therefore submits that it conducted a reasonable search for the requested records, including records requested during mediation. The attached affidavits demonstrate that the City undertook a number of searches and contacted and

> consulted with a number of staff in attempts to locate all records responsive to the request.

During mediation, the appellant made it clear that, contrary to what was communicated by the City, he believes that additional records exist that are responsive to part 8 of his request (records related to recorded calls from the TFS to the EMS on a specified date and time) as well as his subsequent request for copies of hand written records taken by Fire Department personnel on the date in question. During the inquiry stage of the appeal process, the appellant provided representations but did not make any submissions on why he believes additional records exist. The appellant was subsequently provided with copies of the City's representations and the affidavits that address the reasonable search issue, and was invited to both address the issue of reasonable search and respond to the City's representations and affidavits. The appellant chose not to respond.

As identified above, the issue I must address is not whether additional records exist with absolute certainty or even that additional records ought to exist, but rather whether the City has conducted a reasonable search for records, as required by section 17. In this appeal, I am satisfied, based on the City's representations and the affidavit materials provided to me, that the City has provided sufficient evidence to show that it has made a reasonable effort to identify and locate records responsive to part 8 of the request or hand written notes take by TFS.

In my view, the City has provided a clear, sufficiently detailed and credible explanation of the efforts it took to locate records responsive to part 8 of the appellant's request as well as any hand written notes or records taken by members of the TFS when they responded to the specified incident. Moreover, in my view the appellant has failed to provide any tangible evidence or explanation that would suggest or point to the existence of further responsive records. Apart from this, the appellant's bare assertions that more records must exist do not constitute a reasonable basis for believing additional responsive records may exist, or that the City failed to conduct a reasonable search for relevant records. Accordingly, I find that the City has discharged its obligations under section 17 of the *Act*.

As I have found that the City has conducted a reasonable search for both records responsive to part 8 of the request as well as for any hand written notes taken by Fire Department personnel at the scene, it is not necessary for me to determine whether the hand written notes fall within the scope of the appellant's original request.

ADDITIONAL NOTES

The appellant's representations to this office during the inquiry stage stress the appellant's position that there is a need to preserve existing documentary evidence that he believes should have been identified and secured by the coroner's office but was not. The appellant's representations focus on and explain his position that there are many inconsistencies in the information that has been provided to him and his belief that some of the information taken at the

scene of the incident and during subsequent events is incomplete or has not been documented at all.

While I acknowledge that the appellant has experienced great frustration with respect to uncovering information about his son's death that he finds complete and satisfactory, it is important for me to state that my role is to interpret and apply the provisions of the *Act*, which govern the release of information by, among others, the City. It is not within my jurisdiction to make findings or assessments on the emergency response team's response, assessment or subsequent documentation of that incident.

ORDER:

1. I uphold the City's search for responsive records.

2. I uphold the City's decision to deny access to the severed portions of the Emergency Incident Report.

Original signed by: November 25, 2005
Catherine Corban
Adjudicator