



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-2290

Appeal MA07-1

Durham Regional Police Services Board



Tribunal Services Department
2 Bloor Street East
Suite 1400
Toronto, Ontario
Canada M4W 1A8

Services de tribunal administratif
2, rue Bloor Est
Bureau 1400
Toronto (Ontario)
Canada M4W 1A8

Tel: 416-326-3333
1-800-387-0073
Fax/Télééc: 416-325-9188
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The Durham Regional Police Services Board (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for a copy of the police report and a Coroner's Report relating to the discovery of the body of an identified individual. The requester is the sister of the deceased individual.

The Police identified records responsive to the request and in their first decision letter denied access to them, in full. The decision was based on their position that the provisions of section 54(a) of the *Act* (personal representative for an estate) did not apply and that the responsive records should not be disclosed as they qualify for exemption under the discretionary exemption at section 8(2)(a) (law enforcement report) and the mandatory exemption at section 14(1) (invasion of privacy), with reference to the factor at section 14(2)(f) (highly sensitive) and the presumptions at sections 14(3)(a) (medical history) and 14(3)(b) (information compiled as part of a law enforcement investigation).

The requester (now the appellant) appealed the decision denying access. In her appeal letter to this office, the appellant stated that she had not been given enough information to convince her that it was her brother's body that was found. She also requested that she be advised of the location where the body was discovered.

During mediation, the mediator raised the possible application of the exception in section 14(4)(c) of the *Act* (compassionate grounds). The Police then issued a new decision letter which continued to rely on the earlier cited exemptions and took the position that, based on the information available, section 14(4)(c) did not apply in the circumstances of the appeal. However, the Police advised the appellant that they would reconsider their decision if she provided further information about how disclosure would be desirable for "compassionate reasons". The appellant then forwarded a letter to the Police posing three questions:

- how the body was identified (by DNA or dental analysis);
- whether an autopsy was done (and if not, why); and,
- the location where the body was found.

The appellant stated that she needed the information for compassionate reasons and didn't believe that she had received all the information regarding the circumstances of her brother's death. The Police then issued a further decision letter. This letter informed the appellant that:

- there were no records in their custody or control that were responsive to the first two questions she posed;

- a copy of an autopsy report or Coroner's Report might be available from the Coroner's office, directly; and
- that she would be granted partial access to records that were responsive to her inquiry about the location where the body was found. The Police provided the appellant with a severed version of the records and waived the photocopying fee.

At mediation and in their representations in this appeal, the Police took the position that by posing those three questions, the appellant narrowed the scope of the request to include only information about the location where the body was found. The appellant maintained her position that she should be given access to the withheld portions of the responsive records. As a result, the scope of the request became an issue in the appeal.

Notwithstanding her position on the scope of the request, the appellant advised the mediator that she no longer sought access to those records that contained information which predated the discovery of the body. As a result, pages 1 to 5 and 8 to 28 of a specified General Occurrence Report, one of two records the Police identified as responsive to the request, were removed from the scope of the appeal.

At the request of the mediator, the Police provided this office with two pages of a police officer's notes containing the statements of two witnesses relating to the discovery of the body, which the Police argue are not responsive to the request. Accordingly, the responsiveness of those notes is also an issue in the appeal.

Finally, in the course of mediation, the mediator obtained the consent of one of the two witnesses who discovered the body, to release any information he provided to the Police.

Mediation did not resolve the appeal and it was moved to the adjudication stage of the process.

I commenced my inquiry by sending a Notice of Inquiry setting out the facts and issues in the appeal to the Police, as well as the second witness. The Police filed representation in response to the Notice. They asked that a portion of their representations be withheld due to confidentiality concerns. The second witness who discovered the body provided his consent to the release of any information he provided to the Police. A Notice of Inquiry, along with the non-confidential representations of the Police, was then sent to the appellant. The appellant maintained her position that the information she sought should be disclosed but did not provide any further representations in response to the Notice.

RECORDS:

The records the Police identified as responsive to the request consist of two General Occurrence Reports. I will determine below whether two pages from a Police Officer's notebook are also responsive to the request.

DISCUSSION

SCOPE OF THE REQUEST/RESPONSIVENESS OF THE OFFICER'S NOTES

Section 17 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

- (1) A person seeking access to a record shall,
 - (a) make a request in writing to the institution that the person believes has custody or control of the record;
 - (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record; and

...

- (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour [Orders P-134, P-880]. Furthermore, previous orders of this office have established that to be considered responsive to the request, records must "reasonably relate" to the request [Order P-880].

The Police take the position that by posing three questions, the appellant narrowed the scope of the request to include only information about the location where the body was found. The appellant, however, maintained her position that she should be given access to all the withheld portions of the records.

In my view, while the appellant's request, as initially framed, specifically identified two records, it essentially reflected a request for information relating to the death of her brother. In her appeal letter, the appellant explains that she had not been given enough information to convince her that it was her brother's body that was found. In the letter she sent to the Police during mediation, the appellant wrote that she needed the information for compassionate reasons and that she didn't believe she had received all the information regarding the circumstances of his death.

I find that all of the information that the appellant seeks relates to the identification of her brother's body, along with the circumstances of his death, including the location where the body was found. Adopting a liberal interpretation of the request, I conclude that this would include the witness statements found in the two pages of the police officer's notes. Therefore, in accordance with the appellant's advice that she does not seek access to information that predates the discovery of the body, I find that, with the exceptions noted below, the balance of the two

General Occurrence Reports, as well as the police officer's notes, fall within the scope of the request and the appeal, which I find to be for information in the General Occurrence Reports at issue, including information regarding the identification of her brother's body and the circumstances of his death, including the location where the body was found.

Accordingly, as I have found them to be responsive to the request, I will order the Police to provide the appellant with an access decision respecting the two pages of the police officer's notes.

In accordance with my ruling above, however, in addition to the portions of the records that were disclosed to the appellant or removed from the appeal during mediation, I find that the information on pages 34, 38, 39, 40, 41, 42 and 43 of the first General Occurrence Report also does not fall within the scope of the request. This is because it contains information that predates the discovery of the body or is not information regarding the identification of her brother's body, the circumstances of his death or the location where his body was found. As a result, remaining at issue in this appeal are the withheld portions of pages 6, 7, 29, 30, 32, and 33 and all of pages 31 and 35 to 37 of the first General Occurrence Report and the withheld portions of pages 1, 3, 5, 6, 7 and 10 to 12 and all of pages 2, 4, 8 and 9 of the second General Occurrence Report.

PERSONAL INFORMATION

In order to determine which sections of the *Act* may apply, including section 14(4)(c), it is necessary to decide whether the record contains "personal information" and, if so, to whom it relates. That term is defined in section 2(1) as follows:

"personal information" means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (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,
- (c) any identifying number, symbol or other particular assigned to the individual,

- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except where they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual, and
- (h) the individual's name if 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;

The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information [Order 11].

To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual [Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F, PO-2225].

The Police submit that the records contain the name, address and date of birth of the witnesses who discovered the body, as well as a detailed description of the body. The Police provided confidential representations setting out an example of the type of information it withheld. As it is information that is at issue in this appeal, I cannot provide further detail in this order about this part of their representations.

Based upon my review of the withheld portions of the records, I find that all of them contain the personal information of the deceased, as defined in paragraphs (a) and (h) of the section 2(1) definition of "personal information." The records also contain recorded information about the witnesses who discovered the body as well as other identifiable individuals. This information constitutes personal information as that term is defined in section 2(1).

The records at issue do not contain any personal information of the appellant.

PERSONAL PRIVACY

Where a requester seeks personal information of another individual, section 14(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 14(1) applies. If the information fits within any of the paragraphs of (a) to (f) of section 14(1), it is not exempt from disclosure under section 14(1). In the circumstances of this appeal, both sections 14(1)(a) and (f) are relevant. Those provisions read:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

- (a) upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access;
- or
- (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

The two witnesses who discovered the body have provided their consent to the release of any information they provided to the Police to the appellant. As a result, under section 14(1)(a), disclosing any of their personal information would not constitute an unjustified invasion of their personal privacy. Accordingly, I will order that any of their personal information that falls within the scope of the request be disclosed to the appellant. This information appears on withheld portions of pages 6 and 29 and on all of page 31 of the first General Occurrence Report and on withheld portions of pages 2, 3, 5, 7 and all of page 9 of the second General Occurrence Report. For ease of reference, I have highlighted this information on copies of the records that I have provided to the Ministry along with this order. I now turn to the issue of the appellant's access to the personal information of other individuals and the deceased. As set out in section 14(1)(f), this requires a determination whether disclosure of the personal information **does not** constitute an unjustified invasion of their personal privacy.

If any of paragraphs (a) to (h) of section 14(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 14. If no section 14(3) presumption applies, the institution must consider the factors listed in section 14(2), as well as other considerations that are relevant in the circumstances of the case. If a presumed unjustified invasion of personal privacy is established under section 14(3), it cannot be rebutted by one or more factors or circumstances under section 14(2) [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (*John Doe*)].

I will first address the application of the section 14(3)(b) presumption.

Section 14(3)(b)

Section 14(3)(b) reads as follows:

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.

I find that section 14(3)(b) applies to the personal information of identifiable individuals found in the remaining undisclosed portions of pages 29, 32, and 33 as well as on pages 35, 36 and 37 of the first General Occurrence Report Number and the remaining undisclosed portions of pages 1, 2, 4 and 7 of the second General Occurrence Report. I conclude that the personal information severed from the records was compiled and is identifiable as part of an investigation into a possible violation of law, namely the *Criminal Code*. Whether or not charges are laid does not affect the application of 14(3)(b) [Order PO-1849]. Accordingly, the disclosure of this information is presumed to constitute an unjustified invasion of personal privacy.

Section 14(4)(c)

Once established, a presumed unjustified invasion of personal privacy under section 14(3) can only be overcome if section 14(4) or the “public interest override” at section 16 applies. [*John Doe*, cited above].

Section 14(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy. This section was recently amended by the addition of section 14(4)(c) which states:

Despite subsection (3), a disclosure does not constitute an unjustified invasion of personal privacy if it,

discloses personal information about a deceased individual to a spouse or a close relative of the deceased individual, and the head is satisfied that disclosure is desirable for compassionate reasons.

Based on the wording of this provision, a finding that the exception in section 14(4)(c) applies to the personal information in this appeal means that the disclosure of that information would not be an unjustified invasion of personal privacy.

Assistant Commissioner Brian Beamish applied section 14(4)(c) for the first time in Order MO-2237. In determining the scope of the section, he reviewed the relevant legislative history and came to the following conclusion regarding its application:

...by using the words “in the circumstances” the Legislature intended that a broad and all encompassing approach be taken to the consideration by this office of whether or not disclosure is “desirable for compassionate reasons.” In my view, by enacting this amendment to the *Act*, the Legislature intended to address an identified gap in the access to information legislation and increase the amount of information being provided to bereaved family members. ***It is recognized that, for surviving family members, greater knowledge of the circumstances of their loved one’s death is by its very nature compassionate.*** [Emphasis added]

I agree with the Assistant Commissioner’s approach and I will adopt it for the purpose of determining whether the information remaining at issue should be disclosed to the sister of the deceased individual for compassionate reasons.

Steps to follow in applying section 14(4)(c)

In Orders MO-2237 and MO-2245, Assistant Commissioner Beamish determined that the application of section 14(4)(c) requires a consideration of the following questions, all of which must be answered in the affirmative in order for the section to apply:

1. Do the records contain the personal information of a deceased individual?
2. Is the requester a spouse or “close relative” of the deceased individual?
3. Is the disclosure of the personal information of the deceased individual desirable for compassionate reasons, in the circumstances of the request?

Step 1 – Personal Information of the Deceased

As stated above, I have found that the information in all of the records at issue constitute the personal information of the deceased individual. I find that this requirement for the application of section 14(4)(c) is satisfied.

Step 2 – Spouse or “Close Relative”

“Close Relative” is defined in section 2(1) of the *Act*:

“close relative” means a parent, child, grandparent, grandchild, brother, sister, uncle, aunt, nephew or niece, whether related by blood or adoption;

I am satisfied that the appellant is the sister of the deceased individual whose personal information is contained in the records at issue, and therefore she is a “close relative.” I find that this requirement for the application of section 14(4)(c) is also satisfied.

Step 3– Desirable for Compassionate Reasons

Representations

The Police’s argument focuses on the fact that disclosure of the information relating to the deceased would be a presumed unjustified invasion of privacy under section 14(3)(b). In their representations, they also question how they are to apply section 14(4)(c). In particular, they ask whether they should gather up all information “and release it to the requester, irregardless [sic] of its content, or effect it may have on a requester.” The Police then provide an example, which I cannot set out in this order, of the type of information that is found in the records at issue.

In their decision letter, the Police also referred to the factor in section 14(2)(f) (highly sensitive) which favours non-disclosure of the personal information, as well as the presumption in section 14(3)(a) (medical history).

In the Notice of Appeal, the appellant stated that she had not been given enough information to convince her that it was her brother’s body that was found. In the letter she sent to the Police during mediation, she stated that she needed the information for compassionate reasons and didn’t believe she had received all the information regarding the circumstances of her brother’s death.

Finding

The Police’s primary concern is that the personal information at issue is of such a personal and sensitive nature that it ought not to be disclosed.

In Order MO-2245, Assistant Commissioner Beamish addresses a similar position by the Halton Police on the disclosure of sensitive information, when he states:

The position of the Police that the release of the photographs would not reduce the suffering of the appellant, but rather would add more distress and sorrow to her suffering is, in my view, misguided. The appellant has clearly indicated a desire to view the photographs and videotape in order to gain a better understanding of her son’s untimely death. She will be aware that these images are graphic. This is clearly spelled out in the representations submitted by the Police and shared with the appellant. Having been informed that disclosure of the videotape and photographs may be upsetting and disturbing, in my view the appellant is in the best position to determine whether disclosure is in her interests. *In general, institutions may have an obligation to inform spouses and close family members of the nature of the information they have requested under section 14(4)(c); for example if it is particularly graphic or disturbing. However, having provided*

that advice, it does not rest with an institution to make decisions on behalf of that grieving spouse or relative as to whether disclosure is in their best interests. A well-informed adult can make that decision on their own behalf. [emphasis added]

Later, in that order, the Assistant Commissioner further addresses the Halton Police's position that it must protect this "sensitive" information on behalf of the deceased individual and states:

By means of section 14(4)(c), the Legislature has recognized a group of individuals who have a special interest in gaining access to the personal interest of a deceased individual. The intent of the section is to allow for the disclosure of information to family members even though that information would not have been disclosable to them during the life of the individual. *In my view, it is a tacit recognition by the Legislature that, after the death of an individual, it is that person's spouse or close relatives who are best able to act in their "best interests" with regard to whether or not particular kinds of personal information would assist them in the grieving process. The task of the institution, and this office on appeal, is to determine whether, "in the circumstances, disclosure is desirable for compassionate reasons." This does not place the institution "in loco parentis" in the manner suggested by the Police when the disclosure is to adult relatives.* [emphasis added]

I agree with the Assistant Commissioner's reasoning and apply it here.

I accept that much of the information remaining at issue is sensitive information relating to the condition of the deceased's body when it was found and that this type of information would normally be protected under section 14(1) of the *Act*, if a requester did not fall within the close relative category of requester described in section 14(4)(c).

However, despite the Police's statement that the records contain a detailed description of the body, the appellant has not expressed any reluctance in receiving this type of information about her brother. Her request reflects her need to resolve what she believes is a lack of clarity in the information she has received about her brother's death. In my view, this represents an aspect of her grieving over his passing. Considering the appellant's desire to access the information, I give significant weight to the need for the appellant to obtain the information for compassionate reasons.

Accordingly, having considered the representations of the Police and the information of the deceased at issue, I find that, in the circumstances, disclosure of the personal information of the deceased in certain portions of the records is desirable for compassionate reasons and that all the requirements for the application the exception to the general rule against disclosure in section 14(4)(c) have therefore been satisfied. As a result, disclosing the information does not constitute an unjustified invasion of personal privacy and the mandatory exemption at section 14(1) of the *Act* does not apply.

In light of my conclusions I will order that the information that I have highlighted on a copy of the records provided to the Police along with this order, be disclosed to the appellant.

LAW ENFORCEMENT

Although they made no submissions respecting the application of the discretionary exemption in section 8(2)(a) of the *Act*, in their decision letter the Police rely on it to withhold access to the information at issue.

Section 8(2)(a) states:

A head may refuse to disclose a record,

that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law.

The word “report” means “a formal statement or account of the results of the collation and consideration of information”. Generally, results would not include mere observations or recordings of fact [Orders P-200, MO-1238, MO-1337-I]. The title of a document is not determinative of whether it is a report, although it may be relevant to the issue [Order MO-1337-I].

As noted above, the records at issue consist of two General Occurrence Reports. Generally, and despite the appearance of the word “report” in document names, occurrence reports and similar records of other police agencies have been found not to meet the definition of “report” under the *Act*, in that they are more in the nature of recordings of fact than formal, evaluative accounts of investigations: see, for instance, Orders PO-1796, P-1618, M-1120 and M-1141. In Order M-1109, former Assistant Commissioner Tom Mitchinson made the following comments about police occurrence reports:

An occurrence report is a form document routinely completed by police officers as part of the criminal investigation process. This particular Occurrence Report consists primarily of descriptive information provided by the appellant to a police officer about the alleged assault, and does not constitute a “report”.

I agree with this approach and adopt it here. On my review of the records remaining at issue in this appeal, I am satisfied that they also do not meet the definition of a “report” under the *Act*, in that they consist of observations and recordings of fact rather than formal, evaluative accounts. The content of these records is descriptive and not evaluative in nature.

As a result, I find that the exemption at section 8(2)(a) of the *Act* does not apply. Accordingly, as none of the exemptions claimed by the Police apply, I will order that the information that I have highlighted on the copy of the records enclosed with this order be disclosed to the appellant.

Finally, it is not necessary for me to address the application of section 54(a) of the *Act*, as the appellant has not claimed that she is entitled to access the requested information under that section.

ORDER:

1. I order the Police to provide an access decision on the two pages of the police officer's notes in accordance with the *Act*, using the date of this order as the date of the request.
2. I order the Police to disclose to the appellant those portions of the two General Occurrence Reports that I have highlighted on the duplicate copy of the records enclosed with this order. The information that is highlighted should be disclosed.
3. I order the Police to disclose the records in compliance with provision 2 of this order by May 12, 2008 but not before May 7, 2008.
4. In order to verify compliance with this order, I reserve the right to require the Police to provide me with a copy of its access decision as well as a copy of the records that it discloses to the appellant.

Original Signed by: _____
Steven Faughnan
Adjudicator

_____ April 11, 2008