



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

ORDER M-51

Appeal M-910410

City of Toronto



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ORDER

BACKGROUND:

The City of Toronto (the City) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to any records relating to the involvement of the Toronto Fire Department in an incident in which the body of an individual was discovered in an apartment.

The City denied access to portions of the record pursuant to sections 14(3)(a) and 14(2)(f) of the Act, on the basis that the disclosure of the information would constitute an unjustified invasion of the personal privacy of the deceased. The requester appealed the City's decision.

The record was obtained and reviewed by the Appeals Officer. The record at issue consists of two pages. One page is entitled "Toronto Fire Department - Miscellaneous Alarms". This page was released to the appellant with two minor severances. The second page is a computer print-out of the response to a call. This page was released to the appellant with three minor severances.

The appellant provided the appeals officer with a signed authorization, indicating that he was representing the mother of the deceased individual, for the purpose of this appeal.

Mediation of the appeal was unsuccessful and the matter proceeded to inquiry. Notice that an inquiry was being conducted to review the decision was sent to the City and the appellant. Enclosed with each notice was an Appeals Officer's Report which is intended to assist the parties in making their representations to this office concerning the subject matter of the appeal. Representations were received from the appellant and the City.

ISSUES:

The issues arising in this appeal are as follows:

- A. Whether any of the information contained in the record qualifies as "personal information", as defined in section 2(1) of the Act.
- B. Whether section 54(a) of the Act applies.
- C. Whether the mandatory exemption provided by section 14 of the Act applies.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether any of the information contained in the record qualifies as "personal information", as defined in section 2(1) of the Act.

The term "personal information" is defined in section 2(1) of the Act, in part, as "recorded information about an identifiable individual ..." Section 2(2) of the Act states:

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

In my view, the record does contain recorded information about an identifiable individual, the deceased. Section 2(2) does not apply as the death occurred within the past thirty years.

ISSUE B: Whether section 54(a) of the Act applies.

Section 36 of the Act gives an individual a general right of access to his/her own personal information. Section 54(a) of the Act 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;

The appellant, on behalf of the mother of the deceased, would be able to exercise the right of access to the personal information of the deceased, if he is able to demonstrate that the mother is the "personal representative" of the deceased **and** that the request for access to the information relates to the administration of the estate of the deceased.

The term "personal representative" in section 54(a) is not defined in the Act. However, the term was recently defined for the purposes of the provincial Freedom of Information and Protection of Privacy Act (the provincial Act) in Order 294, dated May 1, 1992. In that order, Assistant Commissioner, Tom Mitchinson, stated the following:

Section 66(a) [a section identical to section 54(a)] relates to the administration of an estate of an individual and the meaning of the term must be derived from this context. The term "personal representative" is defined in section 1 of the Estates Administration Act as:

"personal representative" means an executor, an administrator, or an administrator with the will annexed.

In my view, the term "personal representative" in section 66(a) of the Act has the same meaning, i.e., an executor, an administrator, or an administrator with the will annexed.

In order to establish that the mother is the personal representative of the deceased for the purposes of section 54(a) of the Act, evidence such as letters probate, letters of administration or ancillary letters probate under the seal of the proper court, would have to be provided. I have not been provided with any such evidence and, therefore, section 54(a) does not apply. Accordingly, the appellant's request for information, as it relates to the personal information of the deceased, must be dealt with under section 14 of the Act.

ISSUE C: Whether the mandatory exemption provided by section 14 of the Act applies.

Section 14 of the Act prohibits the disclosure of personal information except in certain circumstances. Specifically, section 14(1)(f) of the Act reads as follows:

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(3) of the Act lists the types of personal information the disclosure of which would raise a presumption of an unjustified invasion of personal privacy. The City relies on section 14(3)(a) which reads:

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

relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;

The record contains observations regarding the condition of the body of the deceased made by the fire department personnel who attended at the location where the body was found. I do not consider these observations to relate to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation. Therefore, no presumption of an unjustified invasion of the personal privacy of the deceased exists.

Section 14(2) provides some criteria for the head to consider in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy. The appellant submits that section 14(2)(b) is relevant. The City maintains that section 14(2)(f) is relevant in the circumstances of this appeal. These sections read:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

- (b) access to the personal information may promote public health and safety;
- (f) the personal information is highly sensitive;

Although section 14(2) of the Act identifies some factors that may be relevant in determining whether the disclosure of information would constitute an unjustified invasion of personal privacy, the list found in 14(2) is not exhaustive.

In Order 99, dated October 3, 1989, former Commissioner Sidney B. Linden, in an analysis of a similar provision found in the provincial Act [section 21(2)], stated at page 20:

It should be pointed out that subsection 21(2) requires the head to consider **all the relevant circumstances** in determining whether disclosure of personal information constitutes an unjustified invasion of personal privacy. The subsection lists some of the criteria to be considered; however, the list is not exhaustive. By using the word "including" in its opening paragraph, I believe it requires the head to consider the circumstances of a case that do not fall under one or more of the listed criteria.

Therefore, the circumstances of each case have to be examined carefully to identify any factors under subsection 21(2), listed or unlisted, that might be relevant in the determination of whether disclosure of personal information constitutes an unjustified invasion of personal privacy.

I agree with Commissioner Linden's reasoning and adopt it for the purposes of this appeal.

In the circumstances of this appeal, I feel that one such unlisted factor is that the individual whose personal information is at issue is deceased. Although the personal information of a deceased individual remains that person's personal information until thirty years after his/her death, in my view, upon the death of an individual, the privacy interest associated with the personal information of the deceased individual diminishes. The disclosure of personal information which might have constituted an unjustified invasion of personal privacy while a person was alive, may, in certain circumstances, not constitute an unjustified invasion of personal privacy if the person is deceased.

I have reviewed the record and taken into consideration sections 14(2)(b) and 14(2)(f) of the Act, as well as the unlisted factor I have identified. In my view, in the circumstances of this appeal, the disclosure of the record to the appellant would not constitute an unjustified invasion of the personal privacy of the deceased.

ORDER:

1. I order the City to disclose the record to the appellant within fifteen days from the date of this order.
2. The City is further ordered to advise me in writing within five days of the date on which disclosure was made. Such notice should be forwarded to my attention c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.
3. In order to verify compliance with this order, I order the City to provide me with a copy of the record which is disclosed to the appellant pursuant to Provision 1, **only** upon request.

Original signed by:
Tom Wright
Commissioner

October 8, 1992