



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

ORDER M-153

Appeal M-9200019

Metropolitan Toronto Police Services Board



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ORDER

BACKGROUND:

The Metropolitan Toronto Police Services Board (the Police) received a request for information relating to the investigation by the Police of the circumstances surrounding the death of a named individual. The Police granted partial access to the record identified as responsive to the request, denying access to the balance pursuant to sections 8(1)(l), 8(2)(a), 9(1)(d), 12, 14(1)(f), 14(2)(f), (h) and (i), and 14(3)(a) and (b) of the Municipal Freedom of Information and Protection of Privacy Act (the Act). The requester appealed this decision.

The record is 180 pages in length and includes police officers' notes, "Homicide and Sudden Death Reports", "Supplementary Reports", witness statements, other documents which form part of the investigation and newspaper clippings. Accompanying the record was an index which indicated that sections 8(1)(d) and 38(b) of the Act were also being claimed by the Police to exempt portions of the record.

During the course of processing the appeal, the Police withdrew the exemptions claimed under sections 12, 8(1)(d) and 38(b) of the Act, disclosed page 3 of the record in its entirety, and reduced the number of pages of the record to which section 8(2)(a) was claimed.

In addition, the Police indicated that pages 5, 6, 16, 20, 22, 23, 24, 48-51, 60, 61, and 164 and parts of pages 7, 14, 25, 39, 43, 45, 47, 52, 59, 65A and 70 are not responsive to the request. Having reviewed these parts of the record, I agree with the Police. The information pertains to events or matters not related to the investigation which is the subject of the request. Therefore, I find the pages or parts of pages listed above are not at issue in this appeal.

Complete mediation of the appeal was not possible, and notice that an inquiry was being conducted to review the decision of the Police was sent to the appellant and the Police. Representations were received from the Police only.

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. If the answer to Issue A is yes, whether the exemption provided by section 14 of the Act applies.
- C. Whether the exemption provided by section 8(2)(a) of the Act applies.
- D. Whether the exemption provided by section 8(1)(l) of the Act applies.

E. Whether the mandatory exemption provided by section 9(1)(d) 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 ...".

In my view, with the exception of those pages which I have found not to be responsive to the request, all of the pages of the record that have been withheld from the appellant contain information that satisfies the definition of personal information in section 2(1) of the Act and relates to individuals other than the appellant (the affected persons). One of these affected persons is the named individual whose death was the subject of the Police investigation. It should be noted that section 2(2) of the Act, which provides that personal information does not include information about an individual who has been dead for more than thirty years, does not apply in the circumstances of this appeal as the death of the named individual occurred in 1990.

ISSUE B: If the answer to Issue A is yes, whether the exemption provided by section 14 of the Act applies.

Under Issue A, I found that all of the pages of the record at issue contain the personal information of the affected persons.

Section 14(1) of the Act prohibits the disclosure of personal information to any person other than to the individual to whom the information relates, except in certain circumstances listed under this section. In my view, the only exception to the section 14(1) mandatory exemption which has potential application in the circumstances of this appeal is section 14(1)(f), which 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.

Because section 14(1)(f) is an exception to the mandatory exemption which prohibits the disclosure of personal information, in order for me to find that section 14(1)(f) applies, I must find that disclosure of the personal information would **not** constitute an unjustified invasion of personal privacy.

In determining whether section 14(1)(f) applies, consideration should be given to sections 14(2) and (3) of the Act which provide guidance in determining whether or not disclosure of personal information would constitute an unjustified invasion of personal privacy, and section 14(4), which lists a number of specific types of information, the disclosure of which does not constitute an unjustified invasion of personal privacy.

Generally speaking, if a record contains information of the type described in section 14(4), the exception to the section 14 exemption contained in section 14(1)(f) will apply (Order M-23). The information at issue in this appeal is not one of the types of information listed under section 14(4); therefore, I find that this section is not applicable in the circumstances of this appeal.

Section 14(2) provides a non-exhaustive list of criteria for the Police to consider in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy, while section 14(3) identifies specific types of personal information, the disclosure of which is presumed to constitute an unjustified invasion of personal privacy.

The Police claim that section 14(3)(b) applies to the information in question. This section states:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where 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 state that the personal information in the record was compiled and is identifiable as part of their investigation into the death, under suspicious circumstances, of the named individual.

Having reviewed the record and the representations of the Police, I am of the view that the personal information contained in the record was compiled and is identifiable as part of an investigation into a possible violation of law. Accordingly, the requirements for a presumed unjustified invasion of personal privacy under section 14(3)(b) have been established.

Once it is determined that the requirements for a presumed unjustified invasion of personal privacy under section 14(3) have been established, I must consider whether any other provisions of the Act come into play to rebut this presumption. A combination of listed and/or unlisted factors weighing in favour of disclosure

might be so compelling as to outweigh a presumption under section 14(3); however, such a case would be extremely unusual.

In Orders M-50 and M-51, Commissioner Tom Wright indicated that the fact that the individual to whom the personal information relates is deceased is an unlisted factor which weighs in favour of disclosure of the record. He stated: "... in my view, upon the death of an individual the privacy interest associated with the personal information of the deceased individual diminishes." I agree with Commissioner Wright's view and find that this factor is a relevant consideration in the circumstances of this appeal. However, I am of the view that this factor alone is not sufficient to outweigh the presumed unjustified invasion of personal privacy of the affected person.

I have considered the representations of the Police and the provisions of the Act. I have also carefully reviewed the record. In the circumstances of this appeal, and based on the evidence before me, and particularly in light of the application of section 14(3)(b), I find that the exception under section 14(1)(f) does not apply. Accordingly, I find that the mandatory exemption under section 14(1) prohibits the disclosure of the personal information at issue in this appeal.

Because of the manner in which I have disposed of Issues A and B, it is not necessary for me to consider Issues C, D or E.

ORDER:

I uphold the decision of the Police.

Original signed by: _____ June 25, 1993
Asfaw Seife
Inquiry Officer