



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

ORDER P-519

Appeal P-9200762

**Ministry of the Solicitor General
and Correctional Services**



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ORDER

BACKGROUND:

The Ministry of the Solicitor General (now the Ministry of the Solicitor General and Correctional Services) (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for a coroner's report conducted in November 1978 pertaining to an individual who was shot.

The Ministry granted access to some parts of the report but withheld the remaining portions pursuant to sections 21(1), 21(2)(f) and 21(3)(a) and (b) of the Act. The requester appealed the Ministry's decision.

During the course of the appeal, the appellant informed the Commissioner's Office that he represented two individuals who were convicted of shooting the deceased. The appellant then indicated that these individuals are currently serving life sentences for murder and are seeking to have their sentences judicially reviewed. The appellant also provided the Commissioner's Office with a signed authorization confirming that he represented one of the individuals. A second authorization was, however, never received.

As the appeal progressed through the mediation stage of the process, the Ministry released the Warrant to Bury the Body of a Deceased Person. Further mediation was not successful and notice that an inquiry was being conducted to review the Ministry's decision was sent to the appellant and the Ministry. Representations were received from the Ministry only.

On August 6, 1993, while these representations were being considered, Commissioner Tom Wright issued Order M-170 which interpreted several statutory provisions of the Municipal Freedom of Information and Protection of Privacy Act in a way which differed from the interpretation developed in previous orders. Since a new approach to the operation of the Act was being adopted and because similar statutory provisions are at issue in the present appeal, it was determined that copies of Order M-170 should be provided to the appellant and the Ministry. The parties were then afforded the opportunity to state whether the contents of Order M-170 would cause them to change or to supplement the representations which they had previously made. Further representations were received from the Ministry.

The record at issue in this appeal consists of a 17-page document which includes a Warrant for Post Mortem Examination, a Report of the Post Mortem Examination, the Coroner's Investigation Statement, the Medical Certificate of Death, a Report of the Centre of Forensic Sciences and photographs of the deceased.

ISSUES:

The issues arising in this appeal are:

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

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- B. If the answer to issue A is yes, whether the mandatory exemption set out in section 21 of the Act applies to the record.

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

Section 2(1) states, in part, that:

"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,
- ...
- (h) the individual's name where 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...

Section 2(2) of the Act reads:

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

I have reviewed the record and find that it contains recorded information about the deceased and, thereby, qualifies as "personal information" as defined in section 2(1) of the Act. I also find that

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the record does not contain the personal information of any individual other than the deceased. Finally, section 2(2) of the Act does not apply to the facts of this case since the death occurred within the past 30 years.

ISSUE B: If the answer to issue A is yes, whether the mandatory exemption set out in section 21 of the Act applies to the record.

Once it has been determined that a record contains personal information, section 21 of the Act provides a general rule of non-disclosure of the personal information to any person other than the individual to whom the personal information relates. Section 21(1) provides some exceptions to this general rule of non-disclosure, one of which is section 21(1)(f) of the Act. This provision 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.

In order for section 21(1)(f) to apply, I must find that the release of the personal information at issue would **not** constitute an unjustified invasion of personal privacy.

Sections 14(2), (3) and (4) of the Act provide guidance in determining whether the disclosure of personal information would constitute an unjustified invasion of personal privacy. In Order M-170, Commissioner Wright addressed the interrelationship between sections 14(2), (3) and (4) of the Municipal Freedom of Information and Protection of Privacy Act (which are similar to sections 21(2), (3) and (4) of the Act) in the following way:

... [W]here personal information falls within one of the presumptions found in section 14(3) of the Act, a combination of the circumstances set out in section 14(2) of the Act which weigh in favour of disclosure, cannot collectively operate to rebut the presumption.

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.

I adopt this approach for the purposes of this order.

In its representations, the Ministry relies on sections 21(3)(a) and (b) of the Act to support its position that the release of the remaining parts of the report would constitute an unjustified invasion of the personal privacy interests of the deceased. These provisions state that:

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

- (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
- (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 Ministry submits that the entire record was compiled during the course of a law enforcement investigation. In this case, the investigation was undertaken by the Port Hope Police which has a statutory mandate to investigate crimes which occur within the municipal boundaries of the Town of Port Hope. The Ontario Provincial Police were also called upon to assist in the investigation. The Ministry also points out that, when a violent death occurs in circumstances where Criminal Code charges may be laid, the normal practice is for a coroner's examination to take place.

Based on the representations provided to me, I am satisfied that the record was compiled as part of an investigation into a possible violation of law. Accordingly, the requirements for a presumed unjustified invasion of personal privacy under section 21(3)(b) have been established.

The Ministry has also submitted that the presumption contained in section 21(3)(a) of the Act applies to the coroner's report. In Order P-362, Inquiry Officer Holly Big Canoe found that post-mortem forensic test results involving blood and urine analyses pertain to the medical condition of a deceased person and, accordingly, fall within the ambit of section 21(3)(a) of the Act. Similarly, in the circumstances of this appeal, I find that the coroner's report (which includes blood, urine and tissue sampling, and the coroner's observations about the cause of death) constitute personal information about the medical condition of the deceased. Thus, this information also falls within the section 21(3)(a) presumption and the disclosure of that information would constitute an unjustified invasion of the privacy interests of the deceased.

I have considered section 21(4) of the Act and find that none of the personal information at issue in this appeal falls within the ambit of this provision. In addition, the appellant has not argued that the public interest override set out in section 23 of the Act applies to the facts of this case.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
Irwin Glasberg
Assistant Commissioner

_____ August 25, 1993