



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-375

Appeal M-9400226

Metropolitan Toronto Police Services Board



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NATURE OF THE APPEAL:

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The appellant requested from the Metropolitan Toronto Police Services Board (the Police) a copy of the complete police file regarding a fire at a named address in which her father died. The records at issue in this appeal consist of the parts of a Homicide and Sudden Death Report which have been withheld and the contents of seven pages of a Supplementary Report to the Sudden Death Report. The Police rely on the following exemptions in denying access to these records:

- facilitate commission of unlawful act - section 8(1)(l)
- invasion of privacy - section 14(1).

In addition, by agreement of the appellant, some information was removed as non-responsive to the request.

A Notice of Inquiry was provided to the Police and the appellant. Representations were received from the appellant only. The Police chose not to respond to the Notice of Inquiry.

Pursuant to section 42 of the Act, where the Police refuse access to a record or part of a record, the burden of proof that one of the exemptions applies to the information which has been withheld lies upon the Police. Section 8 is a discretionary exemption. As the Police have not provided representations regarding this exemption I will not consider it further in this order.

Section 14, however, is a mandatory exemption. I will, therefore, consider the possible application of this exemption to the information which has been withheld.

DISCUSSION:

INVASION OF PRIVACY

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual. I have reviewed the information at issue and I make the following findings:

- with the exception of one severance at the top of the page, the information which has been withheld from the Homicide and Sudden Death Report satisfies the definition of "personal information". In my view, the personal information is about the deceased and other identifiable individuals other than the appellant;
- the information contained in the severed portion at the top of the Homicide and Sudden Death Report does not satisfy the definition of personal information;
- much of the information contained in the Supplementary Report relates to the Police response to a call regarding a fire. In my view, these portions of the records do not contain the personal information of the deceased or any other person;
- the Supplementary Report contains names of several individuals who attended the scene or were

otherwise involved in their professional capacity. It has been established in a number of previous orders that information provided by, or relating to an individual in a professional capacity or in the execution of employment responsibilities is not "personal information" (Orders M-71 and M-108). In my view, information contained in the Supplementary Report which identifies or relates to individuals such as police officers, firefighters and medical personnel does not qualify as personal information for the purposes of the Act. Similarly, information which identifies individuals as the principals of the company which owned the building at which the fire occurred does not qualify as personal information;

- the Supplementary Report contains the names of several individuals other than the deceased. I find that once their names are removed, however, some of the remaining information cannot be said to be about an identifiable individual;
- I find that the balance of the information contained in the Supplementary Report satisfies the definition of "personal information", and this information relates to the deceased and to other identifiable individuals other than the appellant.

I have highlighted in yellow those portions of the Supplementary Report which constitute the personal information of the deceased and other individuals referred to in the record.

The remaining portions of the Supplementary Report do not contain personal information and section 14 is, therefore, not applicable to these portions. As no other exemptions apply to this information, it should be disclosed to the appellant in accordance with the highlighted copy of the record provided to the Freedom of Information and Privacy Co-ordinator of the Police with a copy of this order.

I have also highlighted in pink the information on the Sudden Death Report which does not contain personal information. The Police claim that section 8 of the Act applies to this information. As they have not provided representations to support the claim, this information should be released to the appellant.

Once it has been determined that a record contains personal information, section 14(1) of the Act prohibits the disclosure of this information except in certain circumstances.

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 personal privacy. Where one of the presumptions in section 14(3) applies to the personal information found in a record, the only way such a presumption against disclosure can be overcome is if the personal information falls under section 14(4) or where a finding is made that section 16 of the Act applies to the personal information.

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

The Police indicate in their decision letter that sections 14(3)(a), (b) and (d) of the Act apply to the information contained in the records. These sections read as follows:

[IPC Order M-375/August 17,1994]

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if 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;
- (d) relates to employment or educational history;

In her representations, the appellant describes her relationship with her father and outlines her reasons for requesting the information. In addition, she provides letters from individuals who knew both her and her father and which confirm her reasons for requiring the information.

I have reviewed the remaining information contained in the records at issue. While I am sympathetic to the appellant's needs, I am of the view that the remaining information must not be disclosed for the following reasons:

- (1) The information is clearly contained in a Police Report which was completed as a result of a call for Police assistance and which contains information relating to the Police investigation of the circumstances of the fire.
- (2) Personal information contained in the reports relating to the deceased and other individuals can be readily identifiable as being compiled as part of this investigation.
- (3) In my view, the personal information contained in the records was compiled and is identifiable as part of an investigation into a possible violation of law and, accordingly, the presumed unjustified invasion of privacy in section 14(3)(b) applies.
- (4) I find that section 14(4) does not apply to the personal information contained in the records, and the appellant has not claimed that section 16 of the Act applies in this appeal.
- (5) I find that disclosure of the personal information in the records would constitute an unjustified invasion of the personal privacy of the deceased and other individuals referred to in the records and that this information is properly exempt from disclosure under section 14(1) of the Act.

Because of the way I have disposed of this issue, it is not necessary for me to address the possible application of sections 14(3)(a) or (d).

ORDER:

1. I uphold the decision of the Police to exempt the personal information contained in the Homicide and Sudden Death Report.
2. I order the Police to disclose to the appellant the portion of the Homicide and Sudden Death Report which is highlighted in pink on the copy of the record that is being sent to the Police's Freedom of Information and Privacy Co-ordinator with a copy of this order.
3. I order the Police to disclose the information contained in the Supplementary Report to the appellant, **except** the portions of the record that are highlighted in yellow on the copy of the record that is being sent to the Police's Freedom of Information and Privacy Co-ordinator with a copy of this order. The highlighted portions should **not** be disclosed.
4. I order the Police to disclose the portions of the records described in Provisions 2 and 3 within thirty-five (35) days following the date of this order, but not earlier than the thirtieth (30th) day after the date of this order.
5. In order to verify compliance with this order, I reserve the right to require the Police to provide me with a copy of the portions of the records disclosed to the appellant pursuant to Provisions 2 and 3.

Original signed by: _____
Laurel Cropley
Inquiry Officer

_____ August 17, 1994