



**Information and Privacy  
Commissioner/Ontario**

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

# **INTERIM ORDER M-384**

**Appeal M-9400217**

**Metropolitan Toronto Police Services Board**



80 Bloor Street West,  
Suite 1700,  
Toronto, Ontario  
M5S 2V1

80, rue Bloor ouest  
Bureau 1700  
Toronto (Ontario)  
M5S 2V1

416-326-3333  
1-800-387-0073  
Fax/Télééc: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

## **NATURE OF THE APPEAL:**

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The appellant has requested copies of all records from the Metropolitan Toronto Police Services Board (the Police) relating to the death of her husband. Portions of the following records are at issue in this appeal:

- a one-page Homicide and Sudden Death Report (Record 1)
- a four-page Supplementary Report (Record 2)
- eight pages of police officers' notes (Records 3, 4 and 5).

In addition to the portions of records noted above, the Police also denied access to nine photographs of the deceased, and these are also at issue in this appeal.

The Police indicated further that some portions of records have been withheld as they do not pertain to the request. The non-responsive portions consist of parts of the police officers' notebooks. By agreement of the appellant, these portions of the records are not at issue in this appeal.

The Police rely on the following exemptions in denying access to the records and parts of records:

- invasion of privacy - sections 14(1) and 38(b).

A Notice of Inquiry was provided to the appellant and the Police. Representations were received from the appellant. 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. In the absence of representations, I would, in most cases, not consider the possible application of a discretionary exemption.

Section 14, however, is a mandatory exemption. I will, therefore, consider the possible application of this exemption to the records at issue. Section 38(b) is a discretionary exemption. Because of the personal privacy implications of this section, I will also consider its possible application to the records at issue.

## **PRELIMINARY MATTER:**

Section 36(1) of the Act gives individuals a general right of access to their own personal information held by a government body. In addition to the general right of access an individual has to his or her own personal information, section 54(a) provides that:

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;

If it is determined that the records contain the personal information of the deceased, the appellant would be able to exercise the deceased's right to request the deceased's personal information, if she is able to demonstrate that she is the deceased's "personal representative" **and** that her request for access to the information "relates to the administration of the deceased's estate".

In submitting her request to the Police, the appellant attached a copy of her husband's will and indicated that she was making this request in her capacity as executrix of the estate of her husband.

The Police invited the appellant to make representations to verify the relevance of the requested information to the administration of her husband's estate. The appellant did not make representations to the Police concerning this issue.

In her letter of appeal and representations in response to the Notice of Inquiry, the appellant indicates that she and her husband had a small business and that she requires the photographs to verify equipment, materials and products which were stored where the incident occurred. She submits that verification is necessary to account for missing inventory in the settling of her husband's estate.

The term "personal representative" in section 54(a) of the Act means an executor, an administrator, or an administrator with will annexed (Order P-294). In this case, it is clear that the appellant is the deceased's personal representative within the meaning of section 54(a) of the Act.

The remaining issue relating to section 54(a) is whether the request constitutes the exercise of a right or power which "relates to the administration of the deceased's estate".

The rights of a personal representative under section 54(a) are narrower than the rights of the deceased person. That is, the deceased retains his or her right to personal privacy except insofar as the administration of his or her estate is concerned. The personal privacy rights of deceased individuals are expressly recognized in section 2(2) of the Act, where "personal information" is defined to specifically include that of individuals who have been dead for less than thirty years.

In order to give effect to these rights, I believe that the phrase "relates to the administration of the individual's estate" in section 54(a) should be interpreted narrowly to include only records which the personal representative requires in order to wind up the estate.

In reviewing the records, I am of the view that the exercise of the right of access sought by the appellant does not relate to the administration of the estate of the deceased in the sense contemplated by section 54(a).

Therefore, the appellant is not entitled to exercise the deceased's rights regarding this information under section 54(a) of the Act. Accordingly, the appellant's request for information relating to the deceased is in her personal capacity, and is subject to examination pursuant to the provisions of sections 14 and 38(b) of the Act.

## **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, including any identifying number assigned to the individual and 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. I have reviewed the information at issue and I make the following findings:

- the information which has been withheld from Records 1, 3 and 5 satisfies the definition of personal information. In my view, the personal information is about the deceased only;
- the information contained in Record 2 satisfies the definition of personal information. In my view, the information relates to the deceased and the appellant;
- some of the information which has been withheld in Record 2 was provided to the Police by the appellant. In the circumstances of this appeal, I find that there will be no unjustified invasion of the personal privacy of the deceased if this information is disclosed to the appellant;
- the information in Record 4 satisfies the definition of personal information. With the exception of the last severance on page 9 and the top of page 10 of the record, the personal information is about the deceased and the appellant;
- The information which has been withheld at the bottom and top of pages 9 and 10 respectively relates to the appellant only. As section 38(b) cannot be used to deny the appellant access to information which relates only to herself, it should be disclosed to her;
- some of the information which has been withheld in Record 4 was provided to the Police by the appellant. In the circumstances of this appeal, I find that there will be no unjustified invasion of the personal privacy of the deceased if this information is disclosed to the appellant;

- the nine photographs which have been withheld satisfy the definition of personal information and this information relates solely to the deceased;
- I have highlighted on the copy of the records which I have provided to the Police's Freedom of Information and Privacy Co-ordinator those portions of the records which relate solely to the appellant or contain information which was provided by the appellant. These portions of the records should be disclosed to the appellant.

I have found that Records 1, 3 and 5 and the nine photographs contain the personal information of the deceased only, and that Records 2 and 4 contain the personal information of the deceased as well as that of the appellant. As I indicated above, section 36(1) of the Act gives individuals a general right of access to their own personal information held by a government body. Section 38 provides a number of exceptions to this general right of access.

Under section 38(b) of the Act, where a record contains the personal information of both the appellant and other individuals and the Police determine that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the Police have the discretion to deny the requester access to that information.

Where, however, the record only contains the personal information of other individuals, and the release of this information would constitute an unjustified invasion of the personal privacy of these individuals, section 14(1) of the Act prohibits the Police from releasing this information.

In both these situations, 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. Where one of the presumptions found 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 where 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 contained in section 14(3) apply, the Police must consider the application of the factors listed in section 14(2) of the Act, as well as all other considerations that are relevant in the circumstances of the case.

### **Records which contain the personal information of the deceased only - section 14(1)**

The Police indicate in their decision letter that the information contained in Records 1, 3 and 5 and the nine photographs relates to a medical diagnosis or condition (section 14(3)(a)) and/or was compiled and is identifiable as part of an investigation into a possible violation of law (section 14(3)(b)).

I have reviewed these records and I make the following findings:

- (1) The personal information is clearly contained in a police report and police officers' notes which were completed as a result of a call for police assistance and which contain information relating to the police investigation of the circumstances of the death of the deceased.
- (2) Personal information relating to the deceased is readily identifiable as being compiled as part of this investigation.
- (3) In my view, the personal information contained in Records 1, 3 and 5 and the nine photographs which have been withheld was compiled and is identifiable as part of an investigation into a possible violation of law, and accordingly, the presumed unjustified invasion of personal 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 these records would constitute an unjustified invasion of the personal privacy of the deceased 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 section 14(3)(a) with respect to this groups of records.

**Records which contain the personal information of the deceased and the appellant - section 38(b)**

As previously noted, sections 14(2), (3) and (4) provide guidance in determining whether disclosure would constitute an unjustified invasion of personal privacy for the purposes of section 38(b).

The Police indicate in their decision letter that sections 14(3)(a) and/or (b) apply to the information contained in Records 2 and 4.

Having reviewed these records, I am of the view that the above analysis under section 14(1) also applies to them. In my view, the personal information contained in Records 2 and 4 was compiled and is identifiable as part of an investigation into a possible violation of law, and accordingly, the presumed unjustified invasion of personal privacy in section 14(3)(b) applies.

I find that section 14(4) does not apply to the personal information contained in Records 2 and 4, and the appellant has not claimed that section 16 of the Act applies in this appeal.

Accordingly, these records qualify for exemption from disclosure under section 38(b) of the Act.

However, section 38(b) of the Act is a discretionary exemption. The Police did not submit representations relating to the considerations which went into the decision to exercise discretion to apply the section 38 exemption. Given the circumstances of this appeal, I order the Police to provide representations to the Commissioner's office regarding their exercise of discretion in this matter.

**ORDER:**

1. I uphold the decision of the Police to withhold the personal information contained in Records 1, 3 and 5 and the nine photographs.
2. I uphold the decision of the Police to withhold the personal information contained in Records 2 and 4, **except** the portions of the records that are highlighted on the copy of the records that is being sent to the Police's Freedom of Information and Privacy Co-ordinator with a copy of this interim order. The highlighted portions are to be disclosed to the appellant.
3. I order the Police to provide me with written representations as to the factors considered in the exercise of discretion relating to those portions of Records 2 and 4 for which I have upheld the application of the exemption in section 38(b) within fourteen (14) days of the date of this interim order.
4. In order to verify compliance with this interim order, I reserve the right to require the Police to provide me with a copy of the records disclosed to the appellant pursuant to Provision 2.

Original signed by: \_\_\_\_\_  
Laurel Cropley  
Inquiry Officer

\_\_\_\_\_ September 8, 1994