



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-400

Appeal M-9400268

Hamilton-Wentworth Regional 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 Hamilton-Wentworth Regional Police Services Board (the Police) received a request for the police reports prepared following a sailing accident in which an individual drowned. The requester is counsel to the present Administratrix of the estate of the deceased person. For the purposes of this appeal, I will refer to the Administratrix as the appellant. The Police located a number of records which are responsive to the request but denied access to these documents in their entirety under the following exemptions contained in the Act:

- law enforcement - section 8(2)(a)
- invasion of privacy - section 14(1)

The requester appealed this decision to the Commissioner's office. A Notice of Inquiry was forwarded to both parties to the appeal. Representations were received from the Police and the appellant.

The records at issue in this appeal consist of a series of occurrence records prepared by various police officers at the time of the accident involving the deceased. Other documents were prepared outlining the steps taken to locate the body of the deceased. There are also summaries of interviews with witnesses to the accident, officials of the Hamilton Harbour Commission and the deceased's friends and family.

DISCUSSION:

RIGHT OF ACCESS BY A PERSONAL REPRESENTATIVE

Section 2(1) of the Act defines "personal information", in part, to include an 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 contained in the records and find that it satisfies the definition of personal information. I further find that the information relates to the deceased and other individuals and that none of the personal information relates to the appellant.

Section 36 of the Act gives an individual a general right of access to his or her own personal information. In addition, the appellant argues that under section 54(a) of the Act, she is entitled, as the deceased's personal representative, to exercise the same right of access to the personal information contained in the records as the deceased.

Under section 54(a), the appellant would be able to exercise the deceased's right to request and be granted access to the deceased's personal information if she is able:

1. to demonstrate that she is the deceased's "personal representative" **and**
2. to demonstrate that her request for access "relates to the administration of the deceased's estate".

The appellant provided the Police with a notarized copy of an Order of the Ontario Court (General

Division) which granted to her Letters of Administration of the deceased's estate. A pending application to the Court may result in another individual being named as Administratrix.

I agree that the appellant, as the Administratrix of the deceased's estate, is the deceased's "personal representative" for the purposes of the application of section 54(a). Accordingly, the first part of the test has been met. The appellant is further required, however, to demonstrate that the request for access relates to the **administration of the deceased's estate**.

The appellant indicates that the police records are required by her in order to determine whether to continue with a lawsuit against the Hamilton Harbour Commission for the wrongful death of the deceased on behalf of his estate and family.

Previous orders of the Commissioner's office have held that the phrase "relates to the administration of the individual's estate" should be interpreted narrowly to include records relating to financial matters to which the personal representative requires access to wind up the estate.

Section 38(1) of the Trustee Act sets out the rights of personal representatives, including an Administratrix, to maintain actions on behalf of a deceased person. The section precludes a lawsuit on behalf of a deceased's estate for the wrongful death of that individual. This is because, as the deceased had no right to sue for wrongful death at the time of his death, neither does his personal representative have such a right. Accordingly, the lawsuit which has been commenced against the Hamilton Harbour Commission does not relate to the administration of the estate as any damages which may be awarded if the lawsuit is successful will not form part of the assets of the estate of the deceased person. An award of damages may be made to the appellant and other persons in their personal capacities but not on behalf of the deceased's estate.

I find, therefore, that because the wrongful death lawsuit does not relate to the administration of the estate of the deceased, the second part of the section 54(a) test has not been satisfied and the appellant cannot rely on that section to obtain access to the records.

I must now determine whether the disclosure of the deceased's personal information would result in an unjustified invasion of his personal privacy, bearing in mind that because of my findings above, the appellant must now be treated as any other person making a request for another individual's personal information.

INVASION OF PRIVACY

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 the 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 that such a presumption against disclosure can be overcome is if the personal information falls under section 14(4) (which is not the case in the present appeal) or where a finding is made that the public interest override in section 16 of the Act applies to the personal information.

Finally, once it has been shown that a section 14(3) presumption applies to the personal information at issue,

that presumption cannot be overcome by a combination of the factors set out in section 14(2) of the Act.

In their representations, the Police submit that the presumption against disclosure contained in section 14(3)(b) of the Act (information compiled and identifiable as part of an investigation into a possible violation of law) applies to the information contained in the records. The appellant did not address the application of section 14(3)(b) in her representations.

I have reviewed the records at issue and have made the following findings:

1. I find that the records at issue contain the personal information of the deceased and of other identifiable individuals.
2. The records were compiled by the Police during their investigation into the death of the deceased. Accordingly, I am of the view that the presumption contained in section 14(3)(b) applies to all of the records.
3. I have considered the application of section 14(4) of the Act and find that none of the personal information at issue falls within the ambit of this provision. In addition, the appellant has not raised the application of section 16 of the Act.
4. I find that the disclosure of the personal information contained in the records at issue would constitute an unjustified invasion of the personal privacy of the deceased and other individuals and is, therefore, properly exempt from disclosure under section 14(1) of the Act.

Because of the manner in which I have disposed of section 14(1), it is unnecessary for me to address the application of section 8(2)(a) of the Act to the records.

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Donald Hale
Inquiry Officer

October 7, 1994