



Information and Privacy
Commissioner/Ontario

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

ORDER M-426

Appeal M-9400460

Ottawa 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 Ottawa Police Services Board (the Police) received a request for access to information related to the requester's father, including the types of charges laid against him, sentencing details and medical problems and treatment. Enclosed with the request was documentation attesting to the fact that the requester had been granted Letters of Administration with respect to the estate of her deceased father (the deceased) who died on November 22, 1971.

The Police identified the following records as being responsive to the request:

Page 1: Criminal Conviction, Conditional and Absolute Discharge and Related Information Sheet

Pages 2-6: Index Cards, Including Name of the Deceased, Date and Notation of Existence of a Report on the Deceased

Pages 7-15: Occurrence and Investigation Reports

The Police denied access to these records in their entirety on the basis of the following exemption:

- invasion of privacy - section 14(1)

The requester appealed the decision of the Police.

A Notice of Inquiry was sent to the appellant and the Police. Representations were received from the Police and counsel for the appellant.

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 contained on Pages 1-6, 8, 12, 13, and 14 relates solely to the deceased while that on Pages 7, 9-11, and 15 relates to the deceased and other identifiable individuals. None of the information contained in the records relates to the appellant.

Section 2(2) provides that personal information does not include information about an individual who has been dead for more than 30 years. Since the deceased died 23 years ago, section 2(2) does not apply in the circumstances of this case.

Section 36 of the Act gives an individual a general right of access to his/her own personal information. In

addition, the appellant argues that under section 54(a) of the Act, she is entitled, as the personal representative of the deceased, 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 to:

1. demonstrate that she is the "personal representative" of the deceased; and
2. 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, on May 31, 1994, Letters of Administration of the deceased's estate. Based on this documentation, the Police agree that the appellant has established that she is in fact the "personal representative" of the deceased's estate. I also accept this proposition. Thus the first part of the section 54(a) 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**.

On the same date that the Letters of Administration were issued, the appellant, the estate and a motion picture production company entered into an agreement whereby the production company was to produce a documentary film based on the life experiences of the deceased and their effects on the appellant. Included in this agreement is a description of the rights, obligations and remuneration of the three parties.

Counsel for the appellant has highlighted the following provisions of the agreement as supporting the view that the appellant's request for access is related to the administration of the estate of the deceased. The estate is to receive remuneration and be reimbursed for certain expenses. The estate grants the production company certain rights with respect to the access to and cooperation in securing access to archival material concerning the estate. The estate releases the production company against any claims for a breach or invasion of privacy in any personal rights of the deceased. The estate and the appellant both have a positive duty to use their best efforts to ensure the accuracy of the research and archival materials.

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 (Orders M-205, M-206 and M-400). The Police maintain that the records at issue do not relate to financial matters; rather they are investigations into possible violations of law. Therefore, they maintain that the appellant has not established that the records are required to wind up the estate.

There is no question that the estate is a party to an agreement respecting an ongoing commercial venture in

which there are various financial interests at stake. However, in my opinion the fact that the estate has certain financial rights and obligations pursuant to the production agreement does not mean that the appellant, as administratrix, requires the records to wind up the estate. The records do not involve matters concerning the gathering in of assets and paying out of debts of the estate. Receipt of the requested information may indirectly result in a financial benefit to the estate in the sense that the production may have greater market potential based on the inclusion of archival documentation, including the information the appellant has requested from the Police. However, such a "potential asset" does not satisfy the second criterion of section 54(a) (Order M-243).

Accordingly, the appellant cannot rely on section 54(a) to obtain access to the records.

I must now determine whether disclosure of the deceased's personal information would result in an unjustified invasion of 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) prohibits the disclosure of this information except in certain circumstances.

Sections 14(2), (3) and (4) 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) of the Act, as well as all other circumstances that are relevant in the circumstances of the case.

Section 14(3)

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 on Pages 2-15. Counsel for the appellant maintains that none of the presumptions contained in section 14(3) apply.

Because Page 1 is a record of criminal convictions and dispositions, I am of the view that it is not personal information which was compiled and identifiable as part of an investigation into a possible violation of law. Rather it reflects the results of either a guilty plea or a conviction by a court which by their very nature are events which take place after an investigation has been completed (Orders M-68 and M-222). Thus the presumption in section 14(3)(b) does not apply to Page 1.

Nor does it, in my view, apply to the information contained in Pages 2-6. As I have indicated, these pages are copies of index cards containing the name of the deceased, a date and a notation of some incident in which the deceased was involved or for which he was charged. The Police describe them as "index cards indicating reports involving [the deceased]".

In my opinion, they do not contain personal information that was compiled and is identifiable as **part of an investigation into a possible violation of law**. They are an administrative reference for document holdings of the Police rather than containing information compiled as part of an investigation. Thus the presumption in section 14(3)(b) does not apply to Pages 2-6.

As far as Pages 7-15 are concerned, I am satisfied that the personal information of the deceased and other individuals was compiled by members of the Police as part of their investigations into possible violations of the Criminal Code. Accordingly, the presumption in section 14(3)(b) is satisfied and the exemption in section 14(1) of the Act applies to the personal information contained in these pages.

Section 14(2)

The Police and counsel for the appellant have also made submissions on the applicability of the factors in section 14(2) of the Act.

The Police maintain that the information contained on Page 1 is highly sensitive (section 14(2)(f)) which is a factor weighing in favour of privacy protection of the deceased. They do not cite any factors with respect to Pages 2-6.

Counsel for the appellant argues that access to the personal information may promote public health and safety by bringing the deceased's illness to the public's attention for remedial action (section 14(2)(b)). He maintains that the information is not highly sensitive.

In addition, he claims that disclosure does not offend any of the "negative" circumstances set out in section 14(2). Rather, he states that the following factors which might normally weigh in favour of privacy, in fact, favour disclosure in this case. In this regard he makes the following arguments:

access to the personal information will **not** expose the estate to pecuniary or other harm, rather it will benefit the estate (section 14(2)(e));

the information is required to ensure the accuracy of unconfirmed but available information (section 14(2)(g)); and

disclosure of the information may enhance the reputation of the deceased by fairly explaining "the plight of the victim of the disease" (section 14(2)(i)).

The appellant has also indicated that, as a result of her research, she is aware of much of the information contained in the records. She has described this information and the public sources from which this material was obtained.

The appellant also suggests that, given the length of time that has passed since her father's death, disclosure of the information she seeks would not invade his privacy interests. She thus raises the issue of the diminishment of privacy interests after death.

In Order M-50, Commissioner Tom Wright noted that, under section 2(2) of the Act, the personal information of a deceased individual retains this status for 30 years after the person dies. He went on to indicate, however, that where an individual has been dead for less than this period of time, the privacy rights of the individual in his or her personal information may be said to diminish. Commissioner Wright concluded that, while disclosure of personal information might constitute an unjustified invasion of personal privacy while a person was alive, its subsequent disclosure, in certain circumstances might not be viewed in the same light.

In the present case, the appellant's father has been dead for 23 years. In addition, the information which the appellant seeks relates to incidents which occurred between 1957 and 1969, some 25-37 years ago.

I also note that under the Federal Privacy Act, information is no longer considered to be personal if the person has been deceased for **20** years, as opposed to **30** years under the Act. For this reason, the Police initially advised the appellant to contact the Royal Canadian Mounted Police (R.C.M.P.) for a copy of the criminal record of the deceased. In fact, Page 1 was actually prepared by the R.C.M.P. Apparently, the copy of this record in the custody of the R.C.M.P. was destroyed before the appellant could request access from this source.

Having carefully reviewed Pages 1-6, the submissions of the parties and all the circumstances of this case, I have made the following findings with respect to section 14(2) of the Act:

1. While in the general case, an individual's criminal background and involvement with the Police may be considered highly sensitive, the nature of the information at issue in this appeal cannot be so characterized. Nor have the Police provided any evidence to explain why this particular information is highly sensitive.
2. I do not agree with the submissions of counsel for the appellant on the application of those factors which he contends weigh in favour of disclosure or at least do not favour privacy protection. He has not provided any evidence to support these assertions.
3. I believe this is a case where the father's right to privacy has diminished following his death

and the subsequent passage of time.

4. The evidence indicates that were it not for the destruction of the information contained in Page 1 by the R.C.M.P., it would have been available to the appellant.
5. Accordingly, I find that disclosure of the personal information of the deceased contained in Pages 1-6 would not constitute an unjustified invasion of the personal privacy of the deceased pursuant to section 14(1) of the Act.

PUBLIC INTEREST IN DISCLOSURE

Counsel for the appellant submits that there exists a public interest in the disclosure of the requested information under section 16 of the Act. I will consider this argument with respect to Pages 7-15 which I have found to be exempt pursuant to section 14(1).

In order for section 16 to apply, to the personal information at issue, two requirements must be met. First, there must exist a compelling public interest in the disclosure of the records. Second, this interest must clearly outweigh the purpose of the exemption relating to personal privacy.

In his representations, counsel for the appellant indicates that it is in the public interest that information related to individuals who have the same illness as the deceased be disseminated and addressed. He makes no submissions on how disclosure of the personal information of the other individuals contained in these pages could achieve these goals.

I have carefully reviewed counsel's representations in conjunction with the circumstances of this case. I find that to a large degree the appellant's interest in disclosure is personal rather than public in nature. Moreover, there does not exist a **compelling** public interest in the release of the occurrence and investigation reports which outweighs the purpose of the privacy protection exemption.

As a result, section 16 does not apply in the circumstances of this appeal and Pages 7-15 are exempt from disclosure under section 14(1) of the Act.

ORDER:

1. I uphold the decision of the Police not to disclose Pages 7-15.
2. I order the Police to disclose Pages 1-6 in their entirety to the appellant within fifteen (15) days of the date of this order.

3. In order to verify compliance with the provisions of this order, I reserve the right to require the Police to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 2.

Original signed by: _____
Anita Fineberg
Inquiry Officer

_____ December 2, 1994