



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

ORDER M-629

Appeal M_9500279

Ingersoll 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 Ingersoll Police Services Board (the Police) received a request from a mother for access to records pertaining to the death of her son. The Police identified 76 pages of records as being responsive to the request, and denied access to them on the basis of the following exemptions found in the Act:

- third party information - section 10(1)
- invasion of privacy - section 14(1).

The Police also indicated that access to the records was being denied on the basis of section 54(a) of the Act. In appealing this decision, the requester (now the appellant) indicated that she is the administrator of her son's estate, and provided a copy of the Letters of Administration in the Estate.

During mediation, the Police withdrew their reliance on the mandatory exemption in section 10(1) of the Act. In reviewing the records I agree that this section has no application. Accordingly, it is no longer at issue in this appeal.

A Notice of Inquiry was provided to the Police and the appellant. Representations were received from both parties. During the Inquiry stage, the appellant indicated that she has already received a copy of the Coroner's Report and Post Mortem (pages 45 - 48, 50 and 51, and duplicate page 53) and is not seeking access to this record. Accordingly, these pages are not at issue in this appeal. She also indicated that she is not seeking access to correspondence between herself and the Police or the Crown regarding this matter. Pages 69 - 76 consist of two letters written by the appellant to an Assistant Crown Attorney and one letter from the Assistant Crown Attorney to the appellant. These pages are not at issue in this appeal.

RECORDS AT ISSUE

The records at issue consist of a 65-page report on sudden death which contains the following:

- cover page and index (pages 1 - 2)
- incident synopsis (pages 3 - 6)
- sequence of events (pages 7 - 9)
- police reports (pages 10 - 19)
- list of witnesses (page 20)
- witness statements (pages 21 - 43)
- compassionate notification request (page 44)
- Centre of Forensic Sciences (CFS) submission (page 52)
- photographs of deceased (pages 49 and 54 - 65)

The remaining pages consist of a letter to the Chief of Police from the Regional Coroner regarding the deceased (pages 66 - 67) and a letter to the Chief of Police from an Assistant Crown Attorney regarding the appellant and the deceased (page 68).

DISCUSSION:

PERSONAL INFORMATION

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 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 a number of other individuals. Three witness statements (pages 23 - 28, 37 and 38), and pages 44 and 68 also contain the personal information of the appellant.

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;

EXERCISE OF RIGHTS OF DECEASED

In their decision letter, the Police take the position that section 54(a) clearly describes the circumstances under which individuals may exercise the rights of deceased persons, and indicate that the appellant’s request does not fit within these prescribed circumstances. The Police did not provide representations regarding their interpretation of this section.

I dealt with similar arguments in Order M-544 which concerned a request from the daughter of a deceased individual for police records regarding his death. In my view, my analysis of section 54(a) in that order applies equally in the circumstances of this appeal. I stated in that order that:

In my view, the Police have misconstrued the intent of this section, in that they have interpreted it as a definitive prohibition on disclosure of information pertaining to deceased individuals except in the very exceptional and narrow circumstances set out in the section. In essence, the Police have applied section 54(a) as an exemption against disclosure of personal information as it relates to a deceased individual.

Section 54 of the Act should be interpreted rather, as simply providing a mechanism whereby access rights may, in certain defined circumstances, be exercised on behalf of an individual by another party.

With respect to section 54(a), 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".

It is also to be noted that, if section 54(a) applies, 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 this appeal, the majority of the records do not contain the appellant's personal information. Accordingly, if it is determined that section 54(a) does not apply in the circumstances, then the appellant is placed in the same position as any other person who requests the personal information of another individual, and access to these records would be determined in accordance with the provisions found in Part I of the Act. With respect to those records which also contain her personal information, access would be determined under the provisions in Part II of the Act.

In her representations, the appellant states that in her view the circumstances surrounding her son's death were never properly investigated. She indicates that a number of questions remain unanswered and that she wishes the investigation to be reopened. She also refers to litigation between herself (personally and as administrator of her son's estate) and another individual regarding a number of issues which arose from her son's death. However, she confirms that this action was settled out of court.

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 Letters of Administration have been granted to the appellant, and she is, therefore, the deceased's personal representative within the meaning of section 54(a) of the Act.

However, in reviewing the records and the appellant's representations on this issue, 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 Parts I and II of the Act.

INVASION OF PRIVACY

I found above that the records all contain the personal information of the deceased. I found further that some of these records contain the personal information of other individuals, and that pages 23 _ 28, 37, 38, 44 and 68 also contain the personal information of the appellant.

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. For these records (pages 23 - 28, 37, 38, 41 and 68), I will consider whether disclosure would be an unjustified invasion of the personal privacy of other individuals under section 38(b).

Where, however, a 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. I will consider whether disclosure of the remaining pages would be an unjustified invasion of personal privacy under section 14(1).

Under both sections 14(1) and 38(b), 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.

In their representations, the Police submit that the information contained in the witness statements was supplied in confidence (section 14(2)(h)) and that the information pertaining to the deceased is highly sensitive (section 14(2)(f)). The representations of the Police also allude to section 14(3)(b), which provides that disclosure of personal information which "was compiled and is identifiable as part of an investigation into a possible violation of law ..." is presumed to constitute an unjustified invasion of personal privacy.

The ordinary grammatical meaning of "compiled" in the context of this section is to gather or collect information, as part of an investigation. Although page 44 makes reference to the police investigation, I am of the view that the purpose of the record was the notification of family members, including the appellant, that a death had occurred. I find that, in the circumstances of this appeal, the role of the Police in notifying family members of the death of their son and brother is outside of the investigation. None of the information contained in this page was provided in confidence (section 14(2)(h)), nor is it highly sensitive within the meaning of section 14(2)(f). Accordingly, I find that disclosure of the information contained in this page would not be an unjustified invasion of anyone's personal privacy.

Page 68 is a covering letter from an Assistant Crown Attorney to the Chief of Police to which two letters written by the appellant were attached. The only reference to the appellant's son in

this letter is in the context of information which was provided by the appellant. I find that this letter relates to matters which arose following completion of the investigation, and were, therefore, not "compiled" as part of the investigation. Further, neither section 14(2)(f) or (h) are applicable to the information contained in the letter. Disclosure of this page, therefore, would not be an unjustified invasion of personal privacy.

In view of the above, pages 44 and 68 should be released to the appellant.

My review of the remaining records indicates that they were created as part of an investigation into the circumstances surrounding the death of the appellant's son, and as such, I find that they were compiled, and are identifiable, as part of an investigation into a possible violation of law. Accordingly, the requirements for a presumed unjustified invasion of personal privacy under section 14(3)(b) have been satisfied.

The appellant has not argued that sections 14(4) or 16 apply in this case. Accordingly, I find that disclosure of any of the remaining records at issue would be an unjustified invasion of the personal privacy of individuals other than the appellant. For this reason, the information in the records comprising pages 23 - 28, 37 and 38, is exempt under section 38(b), and the remaining information in the records is exempt under section 14(1).

ORDER:

1. I order the Police to disclose pages 44 and 68 to the appellant in their entirety within fifteen (15) days from the date of this order.
2. I uphold the decision of the Police with respect to the remaining records.
3. In order to verify compliance with this order, I reserve the right to require the police to provide me with a copy of the pages disclosed to the appellant pursuant to Provision 1.

Original signed by: _____
Laurel Cropley
Inquiry Officer

_____ October 26, 1995