



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

ORDER M-641

Appeal M_9500376

The Corporation of the Town of Kirkland Lake



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NATURE OF THE APPEAL:

The Corporation of the Town of Kirkland Lake (the Town) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to the file maintained by the Town's Department of Social Services relating to the requester's deceased husband. The Town located the requested records and denied access to them in their entirety, claiming the application of the following exemption contained in the Act:

- invasion of privacy - section 14(1)

The requester appealed the decision to deny access to the records. During the mediation of the appeal, the Appeals Officer identified the possible application of section 38(b) of the Act to the responsive records. In addition, the appellant advised that she was not seeking access to the personal information of her children which may appear in the records. A Notice of Inquiry was provided to the appellant and the Town. Representations were received from both parties

DISCUSSION:

ACCESS TO INFORMATION BY A PERSONAL REPRESENTATIVE

The appellant submits that she is entitled to access the personal information of her deceased husband as his "personal representative". Section 54(a) of the Act states:

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 estate;

In Order P-1027, I articulated an approach which may be followed in situations where a request for the personal information of a deceased individual is made by a close family member where no "personal representative" within the meaning of the Estates Act or the Trustees Act has been appointed. In that case, I established two criteria which must be met in order for a family member requester to assume the place of the deceased person in a capacity similar to that of his or her "personal representative". These are:

1. Does there exist a sufficient degree of overlap between the rights of the requester and those of the deceased's estate such that the requester can be likened to a "personal representative" within the meaning of the Act.
2. Would granting access to the records enhance the personal representative's ability to make a more informed decision about matters relating to the deceased's estate?

In that case, I found that the rights of the husband as a requester and those of his deceased wife were concurrent to a sufficient degree to enable him to be likened to a "personal representative" within the meaning of the Act. In addition, I found that his ability to make an informed choice about whether to proceed with a derivative action on behalf of himself and his children for the loss of his wife's care, guidance and companionship under the Family Law Act would be enhanced by the disclosure of the personal information of his deceased wife. Accordingly, in the circumstances existing in that appeal, I held that the husband was entitled to exercise the same right of access to personal information as his deceased wife would have been.

In the present appeal, the appellant has expressed an interest in proceeding with a legal action against the Town on behalf of herself and her children under the Family Law Act for the loss of the care, guidance and companionship of the deceased. Because of the small value of the deceased's estate, Letters of Administration were not taken out by any of his surviving family members. As was the case in Order P-1027, the legal action contemplated is a derivative one in which the cause of action arises solely because of the relationship between the deceased and his family. I find that there exists a sufficient degree of concurrence between the rights of the deceased's estate and those of the appellant that the appellant can be likened to a "personal representative" of her deceased husband for the purposes of a request under the Act.

The records at issue in this appeal consist of the contents of the deceased's file with the Town's Department of Social Services. The legal action being contemplated involves a claim for damages against the Town for the allegedly negligent treatment which the deceased received from officials in its Department of Social Services.

I must now determine whether the disclosure of the requested records would assist the appellant in making a more informed decision about matters involving the estate, particularly whether to proceed with the contemplated legal action. As was the case in Order P-1027, the right of action is derived from the relationship between the deceased and his surviving family members. I conclude, therefore, that the exercise of the right of access to information relating to the deceased by the appellant relates to the administration of his estate within the meaning of section 54(a) of the Act. I find that the appellant is able to stand in the position of the deceased with respect to her request for his personal information.

INVASION OF PRIVACY

Section 2(1) of the Act defines "personal information", in part, to mean recorded information relating to an identifiable individual including information relating to the education, medical and employment history of the individual as well as information relating to financial transactions in which the individual has been involved. I have reviewed the records at issue to determine whether they contain personal information and, if so, to whom the personal information relates.

Several of the records also contain personal information which relates to their children. This information is not at issue in this appeal. I find that all of the records contain the personal information of the deceased. The majority of records 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. The appellant is, as found above, acting in a capacity which is akin to that of a personal representative of the deceased. She is, accordingly, entitled to the personal information of the deceased as if he were requesting the information himself. The disclosure of her own personal information as well as the personal information of the deceased to her would not, accordingly, constitute an unjustified invasion of personal privacy under section 14.

ORDER:

1. I order the Town to disclose the records, with the exception of the personal information of the children, to the appellant within thirty-five (35) days of the date of this order, but not earlier than the thirtieth (30th) day following the date of this order.
2. In order to verify compliance with this order, I reserve the right to require the Town to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 1.

Original signed by: _____

Donald Hale
Inquiry Officer

November 8, 1995