



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

ORDER M-727

Appeal M_9500715

Halton Regional Police Services Board



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NATURE OF THE APPEAL:

The Halton Regional Police Services Board (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The request was submitted by counsel on behalf of her client and was for access to a copy of the Police notes and any other information related to the death of her client's husband (the deceased). The deceased died in 1992.

The Police responded to the request by advising counsel that, in this situation, the records could only be accessed by an individual who satisfied the conditions in section 54(a) of the Act as a personal representative of the deceased. The Police concluded that counsel's client did not satisfy these conditions. Accordingly, the Police issued a decision denying access to the responsive records on the basis of the following exemptions contained in the Act:

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

Counsel filed an appeal of the denial of access.

During mediation, counsel indicated that she was not seeking access to the personal information of any individuals other than the deceased. The Police released information relating to her client. Therefore, the information which remains at issue is that related to the deceased as found in portions of the Homicide and Sudden Death Report and the police officer's notebook, and the Identification Bureau Report in its entirety.

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

DISCUSSION:

RIGHT OF ACCESS OF A PERSONAL REPRESENTATIVE

Section 54(a) may permit a deceased individual's personal representative to exercise a power or right of the deceased individual under the Act. This section 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 individual's estate;

Since individuals may have a greater right to receive records containing their own personal information than other individuals would have to that information, and since it appears that the records contain a great deal of personal information pertaining to the deceased, counsel's ability to obtain this information could be enhanced by section 54(a), if it applies to her client.

Under section 54(a), the client would be able to exercise her husband's right to request and be granted access to his 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".

In her representations, counsel states that her client has been appointed as the administratrix of the estate of the deceased. She has attached a true copy of the Letters of Administration issued to her client on December 8, 1994. An individual who is the administratrix of an estate is the "personal representative" of the deceased for the purposes of section 54(a) of the Act (Order P_294). Thus, the first criterion for the application of section 54(a) has been satisfied. Therefore, the issue in this appeal is whether the request for access constitutes the exercise of a right or power "relating to the administration of the deceased's estate".

In Order P-1027, Inquiry Officer Donald Hale considered the provisions of section 66(a) of the provincial Freedom of Information and Protection of Privacy Act, the equivalent of section 54(a) of the Act, and, *inter alia*, expanded the meaning of the phrase "relates to the administration of the deceased's estate", as compared to the interpretation of this phrase in previous orders.

Inquiry Officer Hale concluded that this second criterion could be met if "granting access to the requested records would enable the deceased's personal representative to make an informed decision about matters which relate to the estate". Previous orders had interpreted the phrase "relates to the administration of the deceased's estate" more narrowly.

In her submissions, counsel reiterates that her client was the wife of the deceased, mother of his children and that, considering that she is the administratrix of the estate, "... she has a right as a personal representative of the Estate to obtain the documentation and information stated herein as it relates to the administration of [the deceased's] Estate".

In my view, these submissions do not support a finding that her client requires the requested information "to make an informed decision about matters which relate to the estate". Counsel has indicated that her client is currently engaged in a civil law suit against third parties but I have not been provided with any information concerning this matter and, in particular, whether it relates in any way to the estate and/or the information contained in the records at issue.

Therefore, although I sympathize with the client's position, I find that she has not demonstrated that her request for access "relates to the administration of the deceased's estate". Accordingly, section 54(a) does not apply in the circumstances of this appeal.

INVASION OF PRIVACY

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable 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.

The information which has not been disclosed relates to the deceased and two other individuals. It documents the events relating to the death of the deceased and the Police investigation which followed. I find that the records contain the personal information of the deceased and the two other individuals. As I have indicated previously, it is only the personal information of the deceased that remains at issue.

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 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.

Having considered the submissions of the Police and counsel, I make the following findings:

- (1) The personal information at issue was compiled and is identifiable as part of an investigation into a possible violation of law. In this case, because the report was a "sudden death", the Police were called to investigate possible foul play. On this basis, the personal information is subject to the presumption in section 14(3)(b) of the Act.
- (2) Counsel appears to take the position that this information is required for her client's civil suit and is thus relevant to a fair determination of her rights under section 14(2)(d) of the Act. However, where one of the presumptions in section 14(3) applies, it can only be rebutted if section 14(4) or 16 applies. This result is dictated by the findings of the Divisional Court in John Doe v. Ontario (Information and Privacy Commissioner) (1993) 13 O.R. 767.
- (3) The information does not fall within the ambit of section 14(4).
- (4) Counsel does not submit that there is a compelling public interest in the disclosure of the information pursuant to section 16 of the Act.
- (5) Accordingly, disclosure of the personal information of the deceased would result in an unjustified invasion of his personal privacy. This information is, therefore, exempt pursuant to section 14(1) of the Act.

ORDER:

I uphold the decision of the Police.

Original signed by: _____ March 8, 1996
Anita Fineberg
Inquiry Officer