



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

ORDER M-731

Appeal M_9500750

Hamilton-Wentworth Regional 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/Télé: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The appellant's father died in 1975 in Hamilton. His death was the subject of a Sudden Death investigation by the Hamilton-Wentworth Regional Police. The appellant submitted a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) to the Hamilton-Wentworth Regional Police Services Board (the Police) for the police and coroner's reports in connection with this death.

The Police advised the appellant that they do not have a copy of the coroner's report, and identified the contents of their Sudden Death investigation file as responsive. They denied the appellant access to the entire file.

The first matter raised by the Police in their decision letter as a reason for denying access is section 54 of the Act, which permits certain individuals to exercise the rights of others under the Act in some circumstances.

Later in the decision letter, the Police refer to the following exemptions in the Act as the basis for their denial of access:

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

The appellant filed an appeal of this denial of access.

This office sent a Notice of Inquiry to the appellant and the Police. Because the Appeals Officer was of the view that the records may contain the appellant's personal information, the Notice of Inquiry raised the possible application of sections 38(a) and (b) of the Act, which may apply to records containing a requester's own information. In response to the Notice of Inquiry, both the appellant and the Police submitted representations.

PRELIMINARY ISSUE:

Section 54(a) of the Act

As noted above, the Police referred to this section in their decision letter. They stated:

The report can only be accessed per section 54 of the Act which allows rights of access to someone else's personal information only in the following circumstances.

The Police then quote the text of section 54, which states:

Any right or power conferred on an individual by this Act may be exercised,

- (a) 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;
- (b) by the individual's attorney under a continuing power of attorney, the individual's attorney under a validated power of attorney for personal care, the individual's guardian of the person, or the individuals' guardian of property; and
- (c) if the individual is less than sixteen years of age, by a person who has lawful custody of the individual.

Only section 54(a) could have any relevance in the circumstances of this case. However, the appellant has provided nothing to indicate that he is his father's personal representative. It is unlikely that he was appointed as the personal representative, since he was quite young when his father died. Moreover, given the time elapsed, it is likely that all matters relating to the administration of his father's estate are completed. Under the circumstances, I find that section 54(a) does not apply.

However, I wish to comment on the assertion by the Police that the report can "only be" accessed under section 54(a). I do not agree with this view. Any individual has the right to make a request for these records under the general access provision in section 17 of the Act. Moreover, any individual whose personal information appears in a record has a right to request access under the personal information provision in section 36(1). In either situation, the responsibility of the Police is to decide whether any mandatory exemption applies, and to consider whether to deny access under any of the discretionary exemptions which may apply.

Section 54 is **not** an exemption. Rather, it allows certain individuals to exercise the rights of others under the Act if certain conditions are met.

DISCUSSION:

INVASION OF PRIVACY

Section 2(1) of the Act states that personal information means recorded information about an identifiable individual. In particular, section (b) of this definition stipulates that it includes

information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved.

I have reviewed the records to determine whether they contain personal information and if so, to whom the personal information relates.

I find that all of the records contain personal information of the appellant's father. Several records also contain personal information of the appellant's mother.

In addition, some of the records also contain personal information pertaining to the appellant and his siblings. Because they are described as the children of the deceased, I am of the view that they are identifiable individuals for the purposes of the definition quoted above.

I also note that section 2(2) of the Act states that:

Personal information does not include information about an individual who has been dead for more than thirty years.

As indicated at the outset, the appellant's father died in 1975, some 21 years ago. Because this is less than thirty years, I must conclude that section 2(2) does not apply at the present time.

Once a record is found to contain personal information, section 14(1) of the Act provides that this information shall not be disclosed unless one of the exceptions listed in section 14(1) applies. The only such exception which could apply here is section 14(1)(f), which permits disclosure if it would not constitute an unjustified invasion of personal privacy.

However, where a record contains the appellant's personal information and the Police decide not to disclose all or part of the record to prevent an unjustified invasion of someone else's privacy, section 14 does not apply (Order M-352). In such a case, section 38(b) gives the Police the discretion to deny access where disclosure would be an unjustified invasion of privacy.

Therefore, for the records which contain the appellant's personal information, I will decide whether section 38(b) applies. For the other records, I will decide whether section 14(1) applies.

In both these situations, 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.

The Police submit that the presumptions in sections 14(3)(a) and (b) of the Act apply to the records. These sections state:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

- (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
- (b) was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that

disclosure is necessary to prosecute the violation or to continue the investigation.

I agree that the information relating to the cause of death of the appellant's father attracts the presumption provided by section 14(3)(a).

The Police have provided me with information about the steps taken to investigate sudden and unexpected deaths. I am satisfied that these investigations are undertaken to determine whether there were any violations of the Criminal Code in connection with such deaths. In my view, this supports the application of the presumption in section 14(3)(b). Moreover, it has been previously held that, in order to qualify as an investigation into a possible violation of law, it is not required that charges or other legal proceedings were actually initiated as a result of the investigation (Order P-223).

I find that the presumed unjustified invasion of personal privacy provided by section 14(3)(b) applies to all of the records.

None of the information in the records is information described in section 14(4). The appellant argues that the "public interest override" in section 16 applies to rebut the presumed unjustified invasion of privacy. This section states:

An exemption from disclosure of a record under sections 7, 9, 10, 11, 13 and 14 does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

This section requires that there be a **compelling** public interest, and that this compelling public interest must **clearly** outweigh the purpose of the exemption.

To justify the application of section 16, the appellant states that "the presumption against disclosure is rebutted by the fact that the report relates to an individual who has been deceased for over twenty years."

In my view, this argument does not demonstrate any public interest in the disclosure of these records. Moreover, because of section 2(2), quoted above, it is clear that the legislature turned its mind to the issue of when an individual's privacy rights in personal information ought to cease, and determined that this should occur thirty years after death. In my view, given the legislature's role as an arbiter of public policy, the enactment of section 2(2) disposes of any argument based on a general public interest in the earlier disclosure of the personal information of deceased individuals.

I find that the appellant has failed to demonstrate that there is any public interest, compelling or otherwise, in the disclosure of this information. In my view, his interest in the information is of a private nature. Therefore, I find that section 16 does not apply.

Because the presumption in section 14(3)(b) applies, the exception in section 14(1)(f) has not been established for those records which do not contain the appellant's personal information, and I find that they are exempt under section 14(1). Similarly, for records which do contain the

appellant's personal information, the application of this presumption means that disclosure would be an unjustified invasion of personal privacy, and these records are exempt under section 38(b). Accordingly, all the records are exempt under one or the other of these sections.

I have considered whether severances to permit disclosure of the appellant's own personal information would be possible, since neither section 14(1) nor section 38(b) is available to deny access to an individual's own personal information. In this case, however, this information pertains to the appellant and others, and is inextricably intertwined with the personal information of the appellant's father. Therefore, even the disclosure of this information would be an unjustified invasion of the privacy of these other individuals and severance is not possible.

Because of the way I have applied sections 14(1) and 38(b), it is not necessary for me to consider the application of sections 8(2)(a) and 38(a).

While I sympathize with the appellant's desire to better understand the circumstances of his father's death, I must uphold the decision of the Police in this appeal. However, the appellant may bear in mind the provisions of section 2(2), quoted above. These may assist him if he requests this information again once thirty years have elapsed after his father's death.

ORDER:

I uphold the decision of the Police.

Original signed by: _____

John Higgins
Inquiry Officer

March 19, 1996