



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

ORDER M-820

Appeal M_9600221

Hamilton_Wentworth Regional Police Services Board



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NATURE OF THE APPEAL:

The appellant requested information from the Hamilton-Wentworth Regional Police Services Board (the Police) under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The information related to the investigation of the appellant's wife's death, which occurred in 1994.

The Police denied access to the record identified as responsive to the request based on the following exemptions:

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

The appellant appealed the decision to deny access. This office notified the Police and the appellant of the appeal and provided both parties with the opportunity to submit representations on the issues identified in the notice. Both parties submitted representations.

Subsequently, while the representations were being considered, the Ontario Court (General Division) (Divisional Court) issued its decision in the case of Adams et al v. Donald Hale, Inquiry Officer, Information and Privacy Commissioner/Ontario et al (21 June 1996) Toronto Doc. 743/95. This decision interpreted several provisions of the provincial Act in a way which differed from the interpretation developed in orders of the Commissioner. Since similar statutory provisions were also at issue in the present appeal, it was determined that copies of the Divisional Court decision should be provided to the parties.

The appellant and the Police were provided with the opportunity to change or to supplement the representations previously submitted. Neither party submitted additional representations.

RECORD:

The record consists of 54 pages of reports, forms and witness statements. In some cases, the records are duplicates. With the duplicates removed, the record consists of 34 pages. The Police denied access to the record in its entirety.

DISCUSSION:

PERSONAL REPRESENTATIVE

Section 54(a) of the Act states that the appellant would be able to exercise his deceased wife's right to request and be granted access to her personal information if he is able to demonstrate that he is the deceased's "personal representative" **and** if his request for access to the information "relates to the administration of the individual's estate".

The appellant states that his wife died intestate, leaving no assets to be probated under the Estates Act. Accordingly, no "personal representative" within the meaning of the Estates Act or the Trustees Act has been appointed. He states that because he has commenced a court action

under the Family Law Act based on the loss of companionship of the deceased, he can be likened to a “personal representative” for the purposes of the Act.

In light of the Divisional Court’s decision in the case of Adams et al v. Donald Hale, Inquiry Officer, Information and Privacy Commissioner/Ontario et al, it is my view that this is not sufficient to establish that he is his wife’s personal representative for the purpose of section 54(a) of the Act. In order to establish that the appellant is his wife’s “personal representative” for the purpose of section 54(a), the appellant would have to provide evidence of his authority to deal with the estate of his deceased wife. Producing letters of probate, letters of administration or ancillary letters probate under the seal of the proper court is necessary in this regard.

INVASION OF PRIVACY

Under section 2(1) of the Act, “personal information” is defined, in part, to mean recorded information about an identifiable individual. Having reviewed the record, I find that the information is primarily about the appellant’s wife and the circumstances surrounding her death. The record, therefore, contains her personal information. The record also contains the personal information of a number of other identifiable individuals, including the appellant. The appellant is identified in parts of the record as next of kin, and parts of the record refer to the contents of discussions with him.

The record also includes statements obtained and interviews conducted by the investigating officers with other family members and witnesses. In my view, the parts of the record which refer to the other individuals contain their personal information, as well as that of the deceased.

Section 36(1) of the Act allows individuals access to their own personal information held by a government institution and the appellant, therefore, has a general right to access the records which contain his personal information.

Section 38 sets out exceptions to this right. Where a record contains the personal information of both the appellant and other individuals, section 38(b) of the Act allows the Police to withhold information from the record if it determines that disclosing that information would constitute an unjustified invasion of another individual’s personal privacy. On appeal, I must be satisfied that disclosure **would** constitute an unjustified invasion of another individual’s personal privacy.

Disclosing the types of personal information listed in section 14(3) is presumed to be an unjustified invasion of personal privacy. If one of the presumptions applies, the Police can disclose the personal information only if it falls under section 14(4) or if section 16 applies to it.

If none of the presumptions in section 14(3) apply, the Police must consider the factors listed in section 14(2) as well as all other relevant circumstances.

The Police submit that the presumptions in sections 14(3)(a), (b) and (g) apply. 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;
- (g) consists of personal recommendations or evaluations, character references or personnel evaluations.

With regard to section 21(3)(b), the Police submit that they were asked to carry out an order to return an involuntary patient to a psychiatric facility. The order was issued under section 28(1)(b) of the Mental Health Act. Section 28(5) of the Mental Health Act prohibits aiding, assisting, abetting or counselling a patient in a psychiatric facility to be absent without authorization. Section 80 of the Mental Health Act states that every person who contravenes any provision of this Act or the regulations is guilty of an offence and on conviction is liable to a fine of not more than \$25,000.

While the investigation appears to have been focused on locating the appellant's wife as opposed to pursuing a charge under the Mental Health Act, I find that the requirements of section 14(3)(b) have been met. As section 14(4) has no application in these circumstances and the appellant has not argued that section 16 applies, I find that the record is exempt under section 38(b) of the Act.

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

_____ August 15, 1996