



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

# **ORDER M\_834**

**Appeal M\_9600177**

**Hamilton-Wentworth Regional Police**



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## **NATURE OF THE APPEAL:**

Under the Municipal Freedom of Information and Protection of Privacy Act (the Act), the appellant requested access to all records relating to the investigation by the Hamilton-Wentworth Regional Police Services Board (the Police) into the sudden death of his son. The Police identified 78 pages of responsive records and denied access to them, claiming the application of the following exemptions contained in the Act:

- law enforcement - section 8(1)(a), (b) and (f) and 8(2)(a)
- invasion of privacy - sections 14 and 38(b)
- discretion to refuse requester's own information - section 38(a)

The appellant appealed the decision to deny access. A Notice of Inquiry was provided to the Police and the appellant. The Police submitted representations.

## **RECORDS:**

The records consist of 78 pages of police officers' notes, motor vehicle accident reports, occurrence and other reports, witness statements, memoranda, statements of claim, correspondence, interview notes, and an ambulance call report.

## **DISCUSSION:**

### **PERSONAL INFORMATION**

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual. Having reviewed the records, I find that all contain information which is primarily about the appellant's son and the circumstances surrounding his death. The information contained in the records, therefore, qualifies as his personal information. The records also contain the personal information of a number of other identifiable individuals, including some references to the appellant.

### **INVASION OF PRIVACY**

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 of access to those 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 type of personal information listed in section 14(3) is presumed to be an unjustified invasion of personal privacy. If one of the presumptions apply, 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 all of the information contained in the records was compiled and is identifiable as part of an investigation into a possible violation of law, section 219(1) of the Criminal Code (criminal negligence causing death). If this is the case, the information falls within the presumption in section 14(3)(b) of the Act.

Section 14(3)(b) states:

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

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 have carefully reviewed the representations of the Police and the records and have made the following findings:

1. The personal information contained in the records was compiled and is identifiable as part of the Police investigation into a possible violation of a specific provision of the Criminal Code. I find, accordingly, that the disclosure of the personal information which is contained in these pages would constitute a presumed unjustified invasion of privacy under section 14(3)(b) of the Act.

As noted above, the records contain some slight references to the appellant. I find, however, that the appellant's personal information is inextricably linked with that of other individuals and cannot, accordingly, be disclosed.

2. None of the personal information contained in these records fall under section 14(4) and the appellant has not raised the possible application of section 16 of the Act.
3. Accordingly, I find that the information contained in the records qualifies for exemption from disclosure under section 38(b) of the Act.

Because I have found that the information contained in the records is exempt under section 38(b), it is not necessary for me to consider the application of sections 8 and 38(a) of the Act.

## **ORDER:**

I uphold the decision of the Police not to disclose the responsive records.

Original signed by: \_\_\_\_\_ September 12, 1996  
Donald Hale  
Inquiry Officer