



Information and Privacy
Commissioner/Ontario

Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER P-1357

Appeal P_9600427

Ministry of the Solicitor General and Correctional Services



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NATURE OF THE APPEAL:

The Ministry of the Solicitor General and Correctional Services (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act). The request was made by the solicitor for the estate of an individual who was the victim of an assault which ultimately caused his death. The same individual was also involved in a traffic accident while being transported to hospital by ambulance from the scene of the assault. The requester sought access to “the complete file and coroner’s report” maintained by the Ministry in relation to the deceased.

The Ministry located the coroner’s report referred to in the request and granted access to it, in part. The Ministry denied access to three pages of the coroner’s report, a one-page “Sudden/ Violent Death Report” and a two-page “Motor Vehicle Accident Report”, both of which were prepared by the Hamilton-Wentworth Regional Police (the Police), claiming the application of the following exemptions contained in the Act:

- law enforcement - section 14(2)(a)
- invasion of privacy - sections 21(1) and 49(b)
- discretion to refuse requester’s own information - section 49(a)

The requester, now the appellant, appealed the Ministry’s decision. A Notice of Inquiry was provided to the Ministry and the appellant. Representations were received from the Ministry only. In its submissions, the Ministry withdrew its reliance on sections 49(a) and (b).

DISCUSSION:

PERSONAL INFORMATION

Under section 2(1) of the Act, “personal information” is defined, in part, to include recorded information about an identifiable individual. I have reviewed the information contained in the two records and find that they contain the personal information of the deceased and other identifiable individuals. The records do not contain any personal information which relates to the appellant.

The appellant indicates that he acts as the solicitor for the estate of the deceased person with respect to civil proceedings which have been commenced as a result of his death. The appellant has not raised the possible application of section 66(a) of the Act which would entitle him, as the personal representative of the deceased, to exercise the deceased’s right to access his own personal information under the Act. I have not been provided with any evidence that the appellant has been appointed the deceased’s personal representative or that the exercise of the right of access relates to the administration of the estate. As such, I find that the appellant is not entitled to the same access rights which the deceased would have had with respect to the personal information requested.

INVASION OF PRIVACY

Once it has been determined that a record contains personal information, section 21(1) of the Act prohibits the disclosure of this information except in certain circumstances. In my view, section 21(1)(f) sets out the only circumstance which may be applicable in this case:

A head shall refuse to disclose personal information to any person other than the individual to whom the individual relates except,

if the disclosure does not constitute an unjustified invasion of personal privacy.

Sections 21(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 21(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 21(4) or where a finding is made that section 23 of the Act applies to the personal information.

If none of the presumptions in section 21(3) apply, the Ministry must consider the application of the factors listed in section 21(2) of the Act, as well as all other circumstances that are relevant in the circumstances of the case.

The Ministry submits that all of the personal information contained in the records falls within the presumption in section 21(3)(b) of the Act. It argues that the personal information was compiled by the Police as part of its investigation into a possible violation of various provisions of the Criminal Code.

Having reviewed the records, I am satisfied that the requirements for a presumed unjustified invasion of personal privacy under section 21(3)(b) have been established. Section 21(4) is not applicable in the circumstances of this appeal and the appellant has not raised section 23. Accordingly, I find that the personal information contained in the records is exempt from disclosure under section 21(1) of the Act.

Because of the manner in which I have addressed section 21(1), it is not necessary for me to consider the application of section 14(2)(a) to the information contained in the records.

ORDER:

I uphold the Ministry's decision to deny access to the records.

Original signed by: _____
Donald Hale
Inquiry Officer

March 5, 1997