



Information and Privacy
Commissioner/Ontario

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

ORDER P-1462

Appeal P_9700171

Ministry of the Attorney General



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NATURE OF THE APPEAL:

The Ministry of the Attorney General (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for a copy of a Special Investigations Unit (SIU) file regarding the shooting of a named individual. The appellant represents the family of the individual. The Ministry granted partial access to the records it identified as responsive to the request, claiming the exemptions found in sections 14(2)(a) (law enforcement report), 21 (invasion of privacy) of the Act to deny access to the remainder. The requester (now the appellant) appealed the Ministry's decision.

This office sent a Notice of Inquiry to the Ministry, the appellant and two persons whose interests may be affected by disclosure of the information contained in the records. Because the appellant represents the family of the deceased, section 66(a) was raised in the Notice of Inquiry. Representations were received from the Ministry and one affected person.

RECORDS:

The records at issue in this appeal consist of the Special Investigations Unit's (SIU's) Director's Report and a number of other documents including Investigation, Supplementary, Incident, General Occurrence and Follow Up Investigation Reports; a Coroner's Warrant for Seizure; an Ambulance Call Report; Ministry of Health Incident Reports; a Duty Roster; police officers' notes; witness statements, lists of documents; a floor plan; a Notice of Trial; a table of contents; a call history; a court folder, disposition and remarks; "C.P.I.C." information; a Call Details Report; correspondence; handwritten notes and an Intake Form.

DISCUSSION:

PERSONAL REPRESENTATIVE

The term "personal representative" in section 66(a) is not defined in the Act. However, section 66(a) relates to the administration of an estate of an individual and the meaning of the term must be derived from this context.

An appellant would be able to exercise the deceased's right to request and be granted access to the deceased's personal information if he is able to demonstrate that he is the deceased's "personal representative" **and** that his request for access to the information "relates to the administration of the deceased's estate".

In order to establish that the appellant is the deceased's personal representative for the purpose of section 66(a), the appellant would have to provide evidence of his authority to deal with the deceased's estate such as letters of probate, letters of administration or ancillary letters probate under the seal of the proper court.

The appellant has not provided any evidence to establish that the appellant or any of the family members of the deceased are the deceased's personal representative for the purpose of section

66(a) of the Act. Therefore, the appellant is not able to exercise the deceased's rights under the Act.

LAW ENFORCEMENT

The Ministry submits that section 14(2)(a) applies to all of the records at issue because they represent a brief entitled the Final Investigation Report. Section 14(2)(a) states:

A head may refuse to disclose a record,

that is a report prepared in the course of law enforcement,
inspections or investigations by an agency which has the function
of enforcing and regulating compliance with a law;

In order for a record to qualify for exemption under section 14(2)(a) of the Act, the Ministry must satisfy each part of the following three-part test:

1. the record must be a report; **and**
2. the report must have been prepared in the course of law enforcement, inspections or investigations; **and**
3. the report must have been prepared by an agency which has the function of enforcing and regulating compliance with a law.

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The Ministry submits that the records provide an overview of the incident and a description of the events prior to, during and subsequent to the matter being investigated. The Ministry states the records contain analysis of the information and statements accumulated and a conclusion based on the information regarding the conduct of the police. In my view, only the Final Investigative Report consists of a formal account of the results of the consideration of the information related to the incident. On this basis, I find that the Final Investigative Report constitutes a "report" for the purposes of section 14(2)(a) of the Act, and part one of the test has been met.

Turning to part two of the test, the SIU is established by section 113 of the Police Services Act and is charged with the investigation of "... the circumstances of serious injuries and deaths that may have resulted from criminal offences committed by police officers" (section 113(5)). The Ministry states that, in the event of such an incident, an independent investigation is conducted by the SIU investigators with a view to determining whether any police officer may have committed a criminal offence in the circumstances. At the conclusion of the investigation, a brief is submitted to the Director of the SIU for review and determination. If reasonable grounds exist, the Director may cause an information to be laid against a police officer in connection with the matters investigated and refer such an information to the Crown Attorney for prosecution. The Director is required to provide a report of the results of the investigation to the Attorney General (section 113(8)).

On the basis of the above, I find that the Final Investigative Report was prepared in the course of a law enforcement investigation by the SIU, an agency which has the function of enforcing and regulating compliance with a law. Thus parts two and three of the test have been met and the Final Investigative Report qualifies for exemption under section 14(2)(a) of the Act.

INVASION OF PRIVACY

Personal information is defined in section 2(1) of the Act, in part, as “recorded information about an identifiable individual.” Having reviewed the remaining records, I find that they contain the personal information of the police officer whose conduct was the subject of the SIU investigation, other police officers and other individuals involved in the incident including the deceased.

Where the record only contains the personal information of individuals other than the appellant, section 21(1) of the Act prohibits an institution from disclosing it except in the circumstances listed in sections 21(1)(a) through (f). Of these, only section 21(1)(f) could apply in this appeal. Section 21(1)(f) permits disclosure if it “does not constitute an unjustified invasion of personal privacy.”

Disclosing the types of personal information listed in section 21(3) is presumed to be an unjustified invasion of personal privacy. If one of the presumptions applies, the institution can disclose the personal information only if it falls under section 21(4) or if section 23 applies to it. If none of the presumptions in section 21(3) apply, the institution must consider the factors listed in section 21(2) as well as all other relevant circumstances.

The Ministry states that the personal information which has been withheld was compiled as part of the SIU investigation into a possible violation of law (i.e. the potential commission of criminal offences by the police officer who was involved in the incident). Accordingly, the Ministry argues that the presumption in section 21(3)(b) applies to exempt this information from disclosure. This section provides:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where 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;

Based on the submissions of the Ministry and my review of the records, I find that the personal information which I have identified above was compiled and is identifiable as part of an investigation into a possible violation of law, that is the Criminal Code. The information does not fall within the types of information listed in section 21(4) and the appellant did not raise section 23.

Based on the application of section 21(3)(b), I find that the disclosure of the information to which this presumption applies would be an unjustified invasion of the personal privacy of individuals other than the appellant and the information is exempt under section 21 of the Act.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
Marianne Miller
Inquiry Officer

_____ October 6, 1997