



Information and Privacy  
Commissioner/Ontario

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

# **ORDER M-1075**

## **Appeal M-9700306**

### **Niagara Regional Police Services Board**



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## **NATURE OF THE APPEAL:**

The Niagara Regional Police Services Board (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for a copy of the “police report in relation to the death of [a named individual]”. The requester is the solicitor for the Estate Trustee named in the Last Will and Testament of the named individual.

The Police identified 16 pages of responsive records, consisting of a “General Incident Report” and five “Supplementary Reports”, and denied access on the basis of the following exemption contained in the Act:

- invasion of privacy - section 14(1)

The Police also advised the requester of her potential ability to utilize the provisions of section 54(a) of the Act. This section gives the personal representative of a deceased person the same rights as the deceased person if the personal representative requires the information to administer the estate.

The requester (now the appellant) appealed the decision of the Police.

During mediation, the appellant and the Police agreed that this appeal would proceed to inquiry solely on the issue of whether the appellant qualifies under section 54(a) to exercise the same right of access as the deceased named individual. If I determine that section 54(a) applies, the Police agreed to reconsider their decision, and to issue a new decision to the appellant. If I find that section 54(a) does not apply, the appellant has agreed not to appeal the section 14 exemption claim.

A Notice of Inquiry was provided to the appellant and the Police. Representations were received from both parties.

## **DISCUSSION:**

### **PERSONAL INFORMATION**

Section 2(1) of the Act defines “personal information”, in part, to include recorded information about an identifiable individual. I have reviewed the records and I find that they contain the personal information of the deceased and other identifiable individuals. They do not contain the personal information of the appellant.

Section 2(2) provides that personal information does not include information about an individual who has been dead for more than 30 years. Because the deceased died in 1997, section 2(2) does not apply in the circumstances of this case.

## RIGHT OF ACCESS BY A PERSONAL REPRESENTATIVE

Section 54(a) of the Act states:

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

Under section 54(a), the appellant would be able to exercise the deceased's right to request and be granted access to the deceased's personal information if she is able to:

1. demonstrate that she is the "personal representative" of the deceased; and
2. demonstrate that her request for access "relates to the administration of the deceased's estate".

In Order M-927, former Inquiry Officer John Higgins made the following comments about the application of section 54(a):

This section merely provides that particular individuals may exercise the rights of others under the Act in certain situations. Section 54(a) is **not** an exemption, and it does **not** create an absolute prohibition on access to information about deceased persons by individuals who do not qualify under it.

In a request for the personal information of a deceased person, if section 54(a) applies, it means that the institution applies the standards used where an individual is requesting his or her own personal information. If an exemption is to be applied, it would have to be one of the exemptions in section 38, which may apply in that situation, rather than the exemptions in sections 6 through 15.

On the other hand, where an individual who does not qualify under section 54(a) requests a deceased individual's information, the institution applies the standards used where an individual requests another individual's information, or makes a request for general records. If an exemption is to be applied, it would have to be found in sections 6 through 15.

I agree, and adopt this approach for the purposes of the present appeal.

## **Personal Representative**

In Order M-919, former Inquiry Officer Anita Fineberg reviewed the law with respect to section 54(a), and came to the following conclusion:

... I am of the view that a person, in this case the appellant, would qualify as a “personal representative” under section 54(a) of the Act if he or she is “an executor, an administrator, or an administrator with the will annexed with the power and authority to administer the deceased’s estate”.

The appellant has provided a copy of the deceased’s will and the certificate appointing her the Estate Trustee. The term “Estate Trustee” has equivalent meaning to “executrix”. I find that the appellant has established that she is the “personal representative” of the deceased, and the first requirement of section 54(a) has been established.

## **Relates to the Administration of the Individual’s Estate**

The appellant submits that the records are required in order to establish whether or not the death of the deceased was caused by an individual who is named as a major beneficiary (the beneficiary) in the will. The appellant states that it is a well established principal of estate administration that a person who has wrongly contributed to the death of an individual is not entitled to benefit under the deceased’s will. The appellant cites the reported case in Brissette Estate v. Brissette (1991), 42 E.T.R. 173 (Ont. Gen. Div.) at page 17, in support of her position, which states:

It is clear when a beneficiary or next of kin causes the death of a testator or an intestate by means of a criminal culpable act such as murder or manslaughter, the criminal wrongdoer is not entitled to benefit from his or her criminal culpable act, nor is his or her estate entitled to benefit.

She argues that in order to properly administer the estate, she must first determine whether the beneficiary has been disentitled under the will due to criminal conduct resulting in the death of the deceased.

The appellant points out that even though the Police decided not to lay criminal charges, she is not precluded from initiating a private prosecution or civil proceeding if there are grounds to do so. The appellant submits that reviewing the records will assist in making this determination.

The Police state that the investigation into the deceased’s death was completed and cleared as an accidental death, with no criminal charges. The Police point out that they referred the appellant to the Coroner’s Office as a possible source of additional information concerning the circumstances of the death. The Police correctly state that the information contained in the records cannot be disclosed to the appellant unless it is established that the information is required for the administration of the estate.

The rights of a personal representative under section 54(a) are narrower than the rights of the deceased person. That is, the deceased retains his or her right to personal privacy except insofar as the administration of his or her estate is concerned. The personal privacy rights of deceased individuals are expressly recognized in section 2(2) of the Act, where “personal information” is defined to specifically include that of individuals who have been dead for less than thirty years.

In order to give effect to these rights, I believe that the phrase “relates to the administration of the individual’s estate” in section 54(a) should be interpreted narrowly to include only records which the personal representative requires in order to wind up the estate.

In my view, the appellant has provided sufficient evidence to establish that she requires the requested information to make an informed decision about matters relating to the beneficiary’s entitlement to certain assets of the estate. I find that the second requirement of section 54(a) has been established by the appellant.

Therefore, I find that the appellant, in her capacity as Estate Trustee, has a right of access under section 36(1) of the Act to the personal information of the deceased which is contained in the records, subject to any exemption claims established by the Police under section 38.

### **ORDER:**

1. I order the Police to provide the appellant with a new decision letter in accordance with the time frames set forth in sections 19 and 21 of the Act, using the date of this order as the date of the request, and without recourse to a time extension under section 20 of the Act.
2. I further order the Police to provide me with a copy of the letter referred to in Provision 1 by forwarding a copy to my attention c/o the Office of the Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario M5S 2V1.

Original signed by: \_\_\_\_\_  
Tom Mitchinson  
Assistant Commissioner

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February 9, 1998