



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-1079

Appeal M-9700341

Hamilton-Wentworth Regional Police Services Board



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NATURE OF THE APPEAL:

A couple (the appellants) made a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) to the Hamilton-Wentworth Regional Police Service (the Police) for access to records relating to their adult daughter's (the deceased) death.

The Police responded by denying access to the records pursuant to the following exemptions contained in the Act:

- law enforcement - sections 8(1)(a), (b) and 8(2)(a) and (c);
- right to fair trial - section 8(1)(f);
- invasion of privacy - section 14(1);
- discretion to refuse requesters' own information - section 38(a).

The appellants appealed the decision of the Police. In doing so, the appellants indicate that the requested information is **not** needed for the administration of the estate, therefore section 54(a) of the Act is not an issue in this appeal.

This office provided a Notice of Inquiry to the appellants and the Police. Because the records at issue may contain the personal information of the appellant(s), the Notice of Inquiry identified section 38(b) (invasion of privacy) of the Act as an issue in this appeal.

Representations were received from both parties.

RECORDS:

The records at issue consist of the sudden death report, seven supplementary reports and 15 witness statements.

DISCUSSION:

PERSONAL INFORMATION/INVASION OF PRIVACY

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual. I have reviewed the records and I find that all of the records contain the personal information of the deceased. The sudden death report, six of the supplementary reports and the witness statements contain the personal information of other identifiable individuals. Four of the supplementary reports and nine witness statements contain small amounts of the appellants' personal information. The remaining records do not contain the appellants' personal information.

Where a record contains the personal information of both the appellant and another individual, section 38(b) allows the institution 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.

Where, however, the record only contains the personal information of another individual, section 14(1) of the Act prohibits an institution from disclosing it except in the circumstances listed in sections 14(1)(a) through (f). Of these, only section 14(1)(f) could apply in this appeal. It permits disclosure if it "does not constitute an unjustified invasion of personal privacy."

In both these situations, sections 14(2) and (3) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the personal privacy of the individual to whom the information relates. Section 14(2) provides some criteria for the head to consider in making this determination. Section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy.

The only way in which a section 14(3) presumption can be overcome is if the personal information at issue falls under section 14(4) of the Act or where a finding is made under section 16 of the Act that there is a compelling public interest in disclosure of the information which clearly outweighs the purpose of the section 14 exemption.

Section 14(3)(b) states that:

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.

The appellants indicate that they are seeking access to the records in order to find out the truth about what happened to their daughter. They believe that the manner of her death was completely uncharacteristic of her personality and past behaviour and that, therefore, there must be more to it than they have been told.

In reviewing the records, I find that the presumed unjustified invasion of personal privacy in section 14(3)(b) applies to the personal information in the records, because this information was clearly "compiled" and is "identifiable" as part of investigations into the circumstances surrounding the death of the appellants' daughter, which are investigations into a possible violation of law (the Criminal Code).

I am sympathetic to the appellants' desire to know more about the circumstances of their daughter's death, and in my view, this is a relevant consideration. However, no single factor or combination of considerations under section 21(2) are sufficient to override the application of a presumption under section 21(3), as was established by the Ontario Court (General Division) in Re John Doe et al. and Information and Privacy Commissioner et al. (1993), 13 O.R. (3d) 767 (Divisional Court).

I find that neither section 14(4) nor section 16 are applicable to the Records. Accordingly, the records are properly exempt from disclosure under sections 14(1) and 38(b) of the Act.

ORDER:

I uphold the decision of the Police.

Original signed by _____
Laurel Cropley
Inquiry Officer

_____ March 5, 1998