



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-1072

Appeal M-9700305

Metropolitan Toronto Police Services Board



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NATURE OF THE APPEAL:

The Metropolitan Toronto Police Services Board (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to records relating to the investigation into the death of the appellant's son. The records consist of a four-page occurrence report and a one-page supplementary report.

The Police denied access to the records pursuant to the following exemption:

- invasion of privacy - section 14(1)

The appellant appealed this decision.

This office sent a Notice of Inquiry to the appellant and the Police. Because the Appeals Officer assigned to the file identified the possibility that the records contain personal information of the appellant, the possible application of the discretionary exemption found in section 38(b) of the Act was included in the Notice.

Representations were received from both parties.

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. Having reviewed the records, I find that they both contain information which is primarily about the appellant's son and the circumstances surrounding his death. Section 2(2) provides that personal information does not include information about an individual who has been dead for more than thirty years. Because the appellant's son died in 1995, section 2(2) does not apply, and the information in the records about the son qualifies as his personal information. The records also contain personal information of a number of other identifiable individuals, including the appellant.

Where a record contains the personal information of both the appellant and another individual, section 38(b) allows the Police to withhold information from the record if they determine that disclosure 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. The appellant is not required to prove the contrary.

Sections 14(2), (3) and (4) of the Act provide guidance in determining whether the disclosure of personal information would constitute an unjustified invasion of personal privacy. Where one of the presumptions found in section 14(3) applies, the only way such a presumption can be overcome is where the personal information falls under section 14(4) or where a finding is made that section 16 of the Act applies to the personal information [John Doe v. Ontario (Information and Privacy Commissioner) (1993), 13 O.R. (3d) 767].

If none of the presumptions contained in section 14(3) apply, the Police must consider the application of the factors listed in section 14(2) of the Act, as well as all other considerations that are relevant in the particular circumstances.

The appellant is not convinced that the cause of his son's death was suicide. He states that no authority has been able or willing to identify the circumstances of his son's death, and he requires the information contained in the records to attempt to determine the cause of his son's death himself. He argues that the claim that disclosure of the records would be an unjustified invasion of personal privacy is being used to cover up the fact that the police "lied" about the circumstances surrounding his son's death.

The Police submit that the factors and presumptions in sections 14(3)(a) and (b) apply.

Section 14(3)(b) provides 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 Police state that "all of the information was recorded as a result of an investigation into the circumstances of a death", and that this investigation conducted by the attending police officers was an investigation into a possible violation of law. I agree, and find that section 14(3)(b) applies, and disclosure of the son's personal information to the appellant would constitute a presumed unjustified invasion of privacy. Even if I were to accept the appellant's arguments, as I have previously indicated, a factor or combination of factors under section 14(2) cannot rebut a presumption under section 14(3).

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.

Accordingly, I find that the Police have properly exercised discretion to deny access to the records pursuant to section 38(b) of the Act. I also find that it would not be feasible to remove personal identifiers of the son and the other identifiable individuals and disclose only those parts of the record which contain the appellant's personal information.

The result of my findings in this case is that the appellant will not receive access to the personal information about his deceased son contained in the records. I understand the appellant's desire to obtain more information about his son's death, and I note that he has received a significant amount of information from the investigating officer, the paramedics and a witness. However, in circumstances where a presumed unjustified invasion of privacy has been established, I am bound by the findings of the Divisional Court in the John Doe case referred to earlier in my order.

ORDER:

I uphold the decision of the Police.

Original signed by: _____
_Tom Mitchinson
Assistant Commissioner

_____ February 3, 1998