



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-1122

Appeal M-9800048

Toronto Police Services Board



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NATURE OF THE APPEAL:

The appellant submitted a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) to the Toronto Police Services Board (the Police) for a copy of the suicide note written by his estranged wife at the time of her death 19 years ago. The Police located the responsive record and denied access to it on the basis of sections 14(1) and 38(b) (invasion of privacy) of the Act. In appealing this decision, the appellant indicated that at the time of his estranged wife's death, they were in the process of reconciling and that he had been given a copy of the note at that time. He added that he subsequently destroyed the note.

This office provided a Notice of Inquiry to the appellant and the Police. 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. I have reviewed the record and I find that it contains the personal information of the appellant and other identifiable individuals including the deceased ex-wife. I note that although the appellant is briefly mentioned in the record, the comments in it are primarily addressed to and concern other individuals.

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. The appellant is not required to prove the contrary.

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 privacy 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 indicate that an investigation was undertaken by the police officers who attended the scene of the death to determine whether the death was a suicide or the result of a criminal act. The Police advise that the note was used by the officers as part of this investigation to assist them in their final determination.

The appellant focuses on the fact that he was given a copy of this note at the time of his ex-wife's death and, therefore, there would be no unjustified invasion of privacy to give him a copy now. In this regard, the Police point out, and correctly so, that at the time of the ex-wife's death, there was no Freedom of Information legislation in place. They submit that the fact that he might have seen the note at that time has no relevance to whether disclosure now would constitute an unjustified invasion of privacy. Moreover, the Police point out that there is no evidence to support the appellant's assertion that he had received the note.

I have considered the parties' submissions and am satisfied that the record was used by the Police as part of their investigation into the circumstances of the ex-wife's death and as such the record was compiled and is identifiable as part of an investigation into a possible violation of law. Accordingly, I find that its disclosure would constitute a presumed unjustified invasion of privacy under section 14(3)(b).

Regardless of whether the appellant had seen and/or been given a copy of the record some 19 years ago, he does not have it now. In my view, this fact is not relevant in the circumstances of this appeal. Further, even if I were to find this a relevant consideration in the circumstances of this appeal, the Ontario Court's (General Division) decision in the case of John Doe et al. v. Ontario (Information and Privacy Commissioner) (1993) 13 O.R. 767 held that the factors and considerations in section 14(2) cannot be used to rebut a presumption in section 14(3).

I find that neither section 14(4) nor section 16 are applicable to the information at issue. Therefore, I find that the record is properly exempt under section 38(b) of the Act.

ORDER:

I uphold the decision of the Police.

Original signed by: _____
 Laurel Cropley
 Adjudicator
 (formerly Inquiry Officer)

_____ June 17, 1998