



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-1148

Appeal MA-980184-1

Toronto Police Services Board



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NATURE OF THE APPEAL:

The Toronto Police Services Board (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The request, made by the agent for the mother of an individual who died suddenly, was for access to the Sudden Death Report prepared by the Police during their investigation of the daughter's death. The agent provided a Power of Attorney executed by the mother authorizing him to act on her behalf in connection with any official tasks and functions relating to the daughter's death. The mother lives outside Canada. I will refer to the mother as the appellant in this order.

The Police located 12 pages of records which were responsive to the request which consist of a seven-page occurrence report, a four-page supplementary report and a one-page property report. Portions of Pages 6 and 12 were disclosed to the appellant. Access to the remaining records was denied under the invasion of privacy exemption contained in section 14(1) of the Act.

The appellant appealed the decision of the Police to deny access. A Notice of Inquiry was provided to the appellant and the Police. Because some of the records appeared to contain the personal information of the appellant, the Notice also requested that the parties make submissions on the possible application of section 38(b) of the Act. In addition, the parties to the appeal were asked to consider whether the appellant may be entitled to exercise any right of access to the undisclosed information as a result of the operation of section 54(a) of the Act.

Representations were received from both the appellant and the Police.

DISCUSSION:

PERSONAL INFORMATION

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual. I have reviewed each of the 12 pages of records at issue and find that, as they relate to the investigation by the Police into her death, all of the records contain the personal information of the daughter. Pages 2, 3, 4, 5, 8, 9, 10 and 11 also contain the personal information of a number of other identifiable individuals. In addition, Pages 5, 6 and 12 contain the personal information of the appellant while a portion of Page 6 includes the personal information of the agent for the appellant. Those portions of Pages 6 and 12 which relate solely to the appellant were disclosed to her by the Police.

INVASION OF PRIVACY

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 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 the Police 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.

The Police claim that the presumption in section 14(3)(b) applies to all of the information in the records as it was compiled as part of an investigation into a possible violation of law. This section states:

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.

I am satisfied that the information contained in all of the records was compiled and is identifiable as part of a law enforcement investigation undertaken by the Police into the circumstances surrounding the daughter's death and that the disclosure of this information would constitute a presumed unjustified invasion of privacy under section 14(3)(b). Even if I were to find that any of the factors in section 14(2) applied 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) held that the 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, the undisclosed personal information in Pages 5, 6 and 12 of the records, which relates to the appellant and her agent, is properly exempt under section 38(b). The personal information in the remaining records which relates only to identifiable individuals other than the appellant or her agent is exempt under section 14(1).

ACCESS AS A “PERSONAL REPRESENTATIVE” OF THE DECEASED

Section 54(a) of the Act provides that, in certain circumstances, individuals other than the person to whom the information relates may exercise access rights to information as if they were that person. The section 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.

The appellant's agent submits that the daughter died suddenly without having made a will and that her sole heir and next of kin is the appellant. Without access to the information contained in the records relating to the daughter's friends and co-workers, the agent indicates that he is unable to locate the daughter's last address or the location of any bank accounts or a post office box which may assist him in recovering her assets and effects on behalf of the appellant.

The Police submit that the agent for the appellant has not provided any documentation to demonstrate that either he or the appellant have been appointed as the deceased's "personal representative" for the purposes of exercising the daughter's right of access under section 54(a) of the Act. The Police rely on the decision of the Ontario Court (General Division) Divisional Court in Adams et al v Information and Privacy Commissioner (Ontario) (Court File 743/95), dated June 21, 1996. That decision, which sought the judicial review of my decision to order the disclosure of certain records in Order P-1027, addressed the application of section 66(a) of the Freedom of Information and Protection of Privacy Act, the equivalent provision in the provincial Act to section 54(a) of the Act.

The Police refer specifically to the finding made by the Court in Adams with respect to the definition of the term "personal representative" used in section 54(a). At page 7 of the decision, the Court held that:

Although there is no definition of "personal representative" in the Act, when that phrase is used in connection with a deceased and the administration of the deceased's estate, it can only have one meaning, which is meaning set out in the definition contained in the Estates Administration Act, R.S.O. 1990, c.E.22, s.1, the Trustee Act, R.S.O. 1990, c.T.23, s.1; and in the Succession Law Reform Act, R.S.O. 1990, c.S.26, s.1:

"personal representative" means an executor, an administrator, or an administrator with the will annexed.

The Police continue by adding that "Without legal documentation from the appellant, it cannot be ruled out that there is another person who could be or has been identified as the personal representative."

The Divisional Court in Adams concluded its discussion of the first part of section 54(a) by stating that:

The question to be decided is whether the person seeking the information is the personal representative of the deceased individual with the power and authority to administer the deceased's estate. Only if so, does the Commissioner go on to decide if the purpose for which the information is sought is for the administration of that estate. If this criterion is satisfied, the Commissioner then applies his expertise to the provisions of the Act, which allow him to determine whether and to what extent there should be disclosure of information in the case at hand.

I find that the appellant, through her agent, has not provided me with the necessary documentation to establish that either she or her agent are the "personal representative" of the deceased within the meaning of the definition described above. I have not been provided with any evidence to establish that either of these individuals have been appointed the executor, administrator or the administrator with the will annexed of the deceased's estate, thereby satisfying the definition of "personal representative" contained in section 54(a). In my view, therefore, neither the appellant nor her agent are entitled to exercise the access rights of the deceased with respect to the information contained in the records which relates to her under section 54(a).

While I appreciate that the appellant seeks to obtain as much information as possible about the circumstances surrounding her daughter's death, in light of the decision of the Divisional Court in Adams and the plain language of section 54(a), I am unable to make a finding that either the appellant or her agent fall within the definition of "personal representative" contained in that section. For this reason, they are not able to exercise a right of access in that capacity under section 54(a).

If, however, the appellant were to provide the necessary documents which would establish her status as a "personal representative" of the daughter within the definition relied upon by the Divisional Court in the Adams decision, she may very well be entitled to make use of the access rights granted to personal representatives of deceased persons in section 54(a).

ORDER:

I uphold the decision of the Police to deny access to the undisclosed portions of the records.

Original signed by: _____
Donald Hale
Adjudicator

September 11, 1998