



**Information and Privacy
Commissioner/Ontario**
**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER M-1149

Appeal MA-980114-1

Elliot Lake Police Services Board



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NATURE OF THE APPEAL:

The Elliot Lake Police Services Board (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The request, made on behalf of the daughter of the victim in a murder-suicide, was for access to all investigation reports including any forensic, coroner and autopsy reports pertaining to the mother's death. The Police identified a number of records as responsive to the request and denied access to them in their entirety, claiming the application of the following exemptions contained in the Act:

- facilitate commission of an unlawful act - section 8(1)(l)
- law enforcement - section 8(2)(a)
- invasion of privacy - sections 14(1) and 38(b)
- discretion to refuse requester's own information - section 38(a)
- confidential correctional record - section 38(e)

The requester, now the appellant, appealed the decision of the Police to deny access to the first group of responsive records, which consist of 141 pages of various incident and supplementary reports, witness statements, diagrams, photographs, a Warrant for a Post Mortem Examination, the Coroner's Report and the suicide note (the Group 1 records).

A Notice of Inquiry was provided to the appellant and the Police. Representations were received from both parties. The appellant refers to a public interest which may exist in the disclosure of the information contained in the records. I will address this submission below. During the inquiry stage of the appeal, the Police located an additional 160 pages of records consisting of police officer's notebook entries, the exhibit list, an ambulance call report and a videotape of the crime scene (the Group 2 records).

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 301 pages of records at issue, as well as the videotape, and find that, as they relate to the investigation by the Police into the death of the appellant's mother and the mother's husband, all of the records contain the personal information of these two individuals.

Pages 4, 19 and 47 of the Group 1 records and pages 61, 62 and 64 of the Group 2 records contain the personal information of the appellant, in addition to a number of other identifiable individuals.

Many of the records also contain the personal information of various people who were interviewed in the course of the Police investigation. They include family members, friends and neighbours of the deceased.

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 deaths of the appellant's mother and her husband 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 section 14(4) is not applicable to the information at issue. Therefore, the personal information relating to the appellant which is contained in Pages 4, 19 and 47 of Group 1 and pages 61, 62 and 64 of
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Group 2 of the records is properly exempt under section 38(b). The personal information in the remaining records which relates only to identifiable individuals other than the appellant is exempt under section 14(1).

PUBLIC INTEREST IN DISCLOSURE

In the submissions made on behalf of the appellant, reference is made to a public interest in the disclosure of the information contained in the records. While the appellant has not specifically raised the application of section 16 of the Act, I will address the possible application of that provision to the records. Section 16 provides:

An exemption from disclosure of a record under sections 7, 9, 10, 11, 13 and **14** does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption. [emphasis added]

It has been established in a number of orders of the Commissioner's office that in order for section 16, "the public interest override", to apply, two requirements must be met. First, there must exist a compelling public interest in the disclosure of the records. Second, this interest must clearly outweigh the purpose of the third party exemption.

In Order P-984, Adjudicator Holly Big Canoe described the criteria for the first requirement mentioned in the preceding paragraph, as follows:

In order to find that there is a compelling public interest in disclosure, **the information contained in a record must serve the purpose of informing the citizenry about the activities of their government**, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices. [emphasis added]

Adjudicator Big Canoe went on to address the second component of the "public interest override" as follows:

Once a compelling public interest is established, it must be balanced against the purpose of the exemption which has been found to apply. Section 23 (the equivalent provision to section 16 in the provincial Act) recognizes that each of the exemptions listed therein, while serving to protect valid interests, must yield on occasion to the public interest in access to government information. Important considerations in this balance are the principle of severability and the extent to which withholding the information is consistent with the purpose of the exemption.

I adopt the approach to the interpretation of the "public interest override" articulated by Adjudicator Big Canoe for the purposes of this appeal.

In my view, any interest which may exist in the disclosure of the records is purely private to the appellant. I have not been provided with any evidence to indicate that there exists any public interest in the disclosure of this information, nor is such an interest evident from the records themselves. Accordingly, I find that section 16 has no application to the records at issue in this appeal.

Because of the manner in which I have addressed the application of sections 14(1) and 38(b) to the records, it is unnecessary for me to consider whether sections 8(1)(l), 8(2)(a), and 38(a) and (e) apply.

I recognize that the appellant wishes to obtain all of the information possible concerning the circumstances surrounding her mother's death. However, because of the operation of the section 14(3)(b) presumption and the interpretation placed on that section by the Divisional Court in the John Doe case, the access provisions of the Act cannot assist in obtaining the disclosure which she seeks.

ORDER:

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

Original signed by: _____
Donald Hale
Adjudicator

_____ September 14, 1998