



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

ORDER PO-1720

Appeal PA-990109-1

Ministry of the Solicitor General & Correctional Services



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NATURE OF THE APPEAL:

The appellant made a request under the Freedom of Information and Protection of Privacy Act (the Act) to the Ministry of the Solicitor General and Correctional Services (the Ministry). The request was for access to witness statements and diagrams related to a fatal motor vehicle accident which occurred on November 9, 1998. The appellant is a law firm which represents the estate of the deceased individual.

The Ministry attempted to notify the four witnesses who provided statements of the request. One of the witnesses consented to partial disclosure of her statement. Two of the witnesses could not be located, and the parents of the last witness (who is less than 16 years old) objected to disclosure of any part of his statement. The Ministry granted partial access to the first witness statement and a Motor Vehicle Accident Report and denied access in full to three other witness statements. The Ministry denied access to the severed information and the three witness statements pursuant to sections 21 and 49(b) (invasion of privacy) of the Act.

The appellant appealed the Ministry's decision.

During mediation, the appellant agreed not to pursue access to the portions of the one witness statement which was disclosed in part. This record is, therefore, no longer at issue in this appeal.

I sent a Notice of Inquiry to the Ministry, the appellant and the two witnesses who could not be located by the Ministry. I did not notify the last witness, but I have considered the comments made by his parents in their correspondence with the Ministry about the request.

Representations were received from the Ministry and the appellant.

RECORDS:

The records consist of three witness statements. In its representations, the Ministry indicates that it has disclosed the Motor Vehicle Accident Report to the appellant and this record, therefore, is no longer at issue in this appeal.

DISCUSSION:

PERSONAL REPRESENTATIVE

The appellant can exercise the deceased's right to request and be granted access to the deceased's personal information if he can demonstrate: (1) that he is the deceased's "personal representative" and (2) that his request for access to the information "relates to the administration of the deceased's estate".

The term "personal representative" in section 66(a) of the Act means an executor, an administrator, or an administrator with will annexed (Order P-294). The phrase "relates to the administration of the individual's estate" in section 66(a) refers to records relating to financial matters to which the personal representative requires access in order to wind up the estate. (Adams v. Ontario (Information and Privacy Commissioner) (1996), 136 D.L.R. (4th) 12 at 17-20 (Ont. Div. Ct.), quashing Order P-1027; Orders P-294, M-919, MO-1174).

The appellant was asked to provide evidence of his authority to deal with the estate of the deceased individual, and to establish that his request "relates to the administration of the deceased's estate." Other than stating that the appellant acts for the estate of the deceased and that the statements are "relevant to liability", the appellant did not respond to this aspect of the Notice of Inquiry.

For the purposes of this order, I will assume that the appellant is the personal representative of the deceased as contemplated by section 66(a) of the Act and that the request relates to the administration of the deceased's estate although, in my view, I have not been provided with sufficient evidence in that regard.

Invasion of Privacy

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual. The records contain information about the witnesses and the deceased, including descriptions of their involvement in the accident. In my view, this information is the personal information of both the witnesses and the deceased.

Under section 49(b) of the Act, where a record contains the personal information of both the appellant and other individuals and the institution determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the institution has the discretion to deny the requester access to that information.

Sections 21(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 21(2) provides some criteria for the head to consider in making this determination. Section 21(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy. Section 21(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

The Divisional Court has stated that once a presumption against disclosure has been established, it cannot be rebutted by either one or a combination of the factors set out in 21(2) [John Doe v. Ontario (Information and Privacy Commissioner) (1993), 13 O.R. (3d) 767].

The Ministry is relying on the application of the presumption in section 21(3)(b) of the Act. This section states:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where 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 Ministry submits that all of the personal information in the records was compiled and is identifiable as part of an Ontario Provincial Police investigation of a motor vehicle accident. The investigation was into a possible violation of law, specifically the Criminal Code and/or the Highway Traffic Act.

I agree, and find that the presumption in section 21(3)(b) has been established. Having reviewed the records, I am satisfied that none of the types of information described in section 21(4) are present, and this section does not apply.

The appellant's representations are focussed on the last witness statement. He submits that disclosure of this witness statement is appropriate if it will save this witness, who is less than 16 years old, from having to give evidence in court and relive the matter.

I am satisfied that disclosure in these circumstances is not appropriate, given the application of a presumed unjustified invasion of privacy and the strenuous objections of this young man's parents to the disclosure of his statement. Accordingly, I find that the exemption in section 49(b) applies. I have reviewed the Ministry's representations respecting their exercise of discretion in favour of applying section 49(b), and find nothing inappropriate in this regard.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
Holly Big Canoe
Adjudicator

October 12, 1999