



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

ORDER MO-1244

Appeal MA-990068-1

Niagara Regional Police Services Board



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NATURE OF THE APPEAL:

The appellant made a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) to the Niagara Regional Police Services Board (the Police). The request was for access to witness statements, police officers' notebook entries, all reports prepared or received (including toxicology reports), diagrams and photographs pertaining to a fatal motor vehicle accident. The appellant is a private investigator making inquiries on behalf of the deceased's wife. The appellant provided the Police with a consent to disclosure signed by the driver of the car involved in the accident. The deceased was a passenger in the car.

The Police granted partial access to the records, claiming the exemption found in section 14(1)(f) of the Act. The Police also informed the appellant that the notebook of one of the officers was not available because it was lost during the course of his duties.

At mediation, the Police located additional records after conducting a further search. The Police granted partial access to these records and denied access to the remainder, based on the same exemptions originally claimed. This second decision was included within the scope of the original appeal.

Also at mediation, the appellant narrowed the information at issue. The Police were advised of the severances no longer at issue. The appellant also accepts that the police officer's lost notebook is not available.

Further mediation was not possible, and I sent a Notice of Inquiry to the Police, the appellant and two individuals whose interests could be affected by the outcome of the appeal (the affected persons). Representations were received from the Police and the appellant only.

RECORDS:

The records remaining at issue at the conclusion of mediation consist of portions of 14 documents plus two witness statements denied in their entirety. Using the numbering in the index provided to this office by the police, the records denied in part are:

- Record 5 - General Incident Report
- Records 6, 7, 9, 10 and 11 - police officers' notes
- Record 12 - Court summary
- Records 20-23 witness statements
- Record 24 - statement of police officer
- Record 25 - "will say" of police officer
- Record 28 - Appendix "B"

There are also two additional witness statements to which access was denied in their entirety.

PRELIMINARY MATTER:

Record 21 is the statement of the wife of the deceased, on whose behalf the appellant has made the request.

In Order M-444, former Adjudicator John Higgins found that the refusal of access to information which the appellant originally provided to the Metropolitan Toronto Police would be contrary to one of the purposes of the Act, which is to allow individuals to have access to records containing their own personal information unless there is a compelling reason for non-disclosure. This reasoning has been applied in a number of subsequent orders of this Office (M-451, M-613 and P-1457, among others) and, in my view, is equally applicable to Record 21 in the present appeal. Applying section 38(b) to deny access to information which the deceased's wife originally provided to the Police would, applying the rules of statutory interpretation, lead to an "absurd result". Accordingly, section 38(b) does not apply to Record 21.

The appellant submits that, because the driver of the vehicle has authorized him to access her personal information, that his request should be considered as one made by her for access to her own personal information. I disagree. The terms of the authorization signed by the driver do not specify that the appellant is making the request on her behalf, only that she will not consider such disclosure an unjustified invasion of her personal privacy. Therefore, I will take the authorization as evidence that the driver has consented to the disclosure of her personal information to the appellant, not as authorization for him to make a request on her behalf.

DISCUSSION:

Personal Representative

The appellant indicates in his letter of appeal that the information potentially impacts upon the responsibilities of the lawyers providing instructions in this matter in relation to the estate of the deceased.

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" (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 term "personal representative" in section 54(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 54(a) refers to records relating to financial matters to which the personal representative requires access in order to wind up the estate.

The appellant indicates that until the information in question is known, a decision about whether to include the estate as plaintiff in the contemplated civil action cannot be made. Accordingly, in the circumstances, I find that section 54(a) does not apply.

PERSONAL INFORMATION

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual.

The severed information includes a police officer's description of the deceased at the post mortem examination, the apparent cause of death, the condition of the deceased, information provided by the coroner and part of a statement of an ambulance attendant regarding the deceased. All of this information, in my view, is information about the deceased, and qualifies as his personal information.

The driver's description of the events leading up to the accident and a description of the clothing and items the Police seized from the vehicle have also been severed from the records. The driver's description of events involve the deceased and, in my view, this information is the personal information of both of these individuals. The clothing and items seized from the vehicle, however, relate to the driver only.

Some of the severances made to Record 5 involve what appears to be a police officer's pager number. This information is not, in my view, personal information.

The name, address, telephone number and date of birth of two witnesses have been severed, and this information, in my view, is the personal information of each witness. The two witness statements have been withheld in their entirety, and contain information about the witness, the driver and the deceased.

Other than her statement, which has been addressed above, the records do not contain the personal information of the deceased's wife.

Once it has been determined that a record contains personal information, section 14(1) of the Act prohibits the disclosure of this information except in certain circumstances. Specifically, section 14(1)(a) and (f) read:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

- (a) upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access;
- (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

The driver of the car has consented to the disclosure of her personal information to the appellant. Accordingly, the description of clothing and items seized from the car fall within section 14(1)(a) of the Act, and the exemption does not apply. Because the other personal information of the driver is intertwined with the personal information of the deceased and/or the witnesses, it must be considered under section 14(1)(f).

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. Section 14(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 14(2) [John Doe v. Ontario (Information and Privacy Commissioner) (1993), 13 O.R. (3d) 767].

The Police submit that sections 14(3)(a) and (b) apply. These sections state:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

- (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
- (b) 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 submit that all of the personal information in the records was compiled and is identifiable as part of a Police investigation of a motor vehicle accident. The investigation was into a possible violation of law, specifically the Criminal Code.

I agree, and find that the presumption in section 14(3)(b) has been established. Having reviewed the records, I am satisfied that none of the types of information described in section 14(4) are present, and this section does not apply.

Accordingly, I find that Record 21, which is the statement of the wife of the deceased, and the description of clothing and items seized from the car found in other records, do not qualify for exemption and should be disclosed to the appellant. The remaining records and/or parts of records qualify for exemption under section 14 and should not be disclosed to the appellant.

ORDER:

1. I order the Police to disclose Record 21 and the parts of the records which consist of a description of clothing and items seized from the car to the appellant by sending him a copy by **November 10, 1999**.
2. I uphold the decision of the Police not to disclose the remaining records and parts of records.
3. In order to verify compliance with the terms of this order, I reserve the right to require the Town to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 2.

Original signed by
Holly Big Canoe
Adjudicator

October 20, 1999