



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

# **ORDER MO-1247**

**Appeal MA-990096-1**

**Thunder Bay Police Service**



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## **NATURE OF THE APPEAL:**

The Appellants made a request to the Thunder Bay Police Service (the Police) under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for copies of all statements, notes, reports, interviews, notebook entries, summaries and like documents in the possession of the Police in relation to their son's death.

The Police located responsive records and disclosed four records to the appellants. Access to the remaining responsive records was denied in whole or in part pursuant to sections 14(1)(f) (invasion of privacy) with particular reference to sections 14(3)(a) and (b).

The appellants appealed the decision of the Police to deny access to the records.

During mediation it was determined that the Police had also withheld portions of the officer's notebooks as not responsive because they are about other non-related incidents. The appellants agree that this information is not responsive to the request and it is, therefore, not at issue in this appeal.

The Mediator also contacted the two individuals who gave statements to the Police (the affected persons) during mediation to determine if they would consent to the disclosure of their statements. Neither affected person consented to disclosure of their personal information.

I sent a Notice of Inquiry to the Police and the appellants. In reviewing the records, I noted that some references are made to the appellants in them. Therefore, this Notice also raised the possible application of section 38(b) (invasion of privacy) of the Act to any records which contain references to the appellants.

Representations were received from both parties.

## **RECORDS:**

The records at issue consist of 38 pages comprising Sudden Death Reports, a Witness Statement, Regional Coroner's Report, Towed Vehicle Report, Lab Report, Waybill, police officers' notebooks.

## **DISCUSSION:**

### **PERSONAL INFORMATION**

#### **Section 2(1)**

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

The Police submit that since the withheld portions of the records contain the names, addresses, telephone numbers, employment information, medical information and statements of individuals other than the appellants, this information qualifies as personal information as defined in the Act.

The appellants refer to the purposes of the Act as set out in section 1 and submit that “the records should only be blocked to the extent of personal information contained within them. Any other part of the records ought to be provided”.

The appellants argue that the Coroner’s Report contains information about the “cause of death” rather than their son’s medical history. Therefore, they submit that it does not contain their son’s personal information. They submit further that the remaining information in the records does not, for the most part, contain the personal information of their son. Although they acknowledge that portions of the witness statement and any other statements made by witnesses encompassed in the other records may contain some information about their son, they submit that these portions do not contain the personal information of the witnesses as they are “simply observations” made by them.

I do not accept the appellant’s view of the records. The Coroner’s Report contains the results of a post mortem conducted on their son, and as such contains information about his physical state. I find that this information is recorded information “about” their deceased son and thus qualifies as his personal information.

With respect to the witness statement, as well as statements recorded by the Police in other records during their investigation, I find that they contain not only information about the son as related by the witnesses, but information about the witnesses themselves, including their relationship with him and their own activities. In the circumstances of this case, the appellants are aware of the identities of the witnesses and even with their names removed, the appellants would be able to identify them by the information contained in the records.

I note that the Police have provided the appellants with a considerable amount of information in the records. The portions which have been withheld relate directly to their deceased son and/or to the witnesses. I find that all of the information at issue is about these individuals and thus qualifies as their personal information.

One of the Sudden Death Reports and four of the police officers’ notes also contain references to the appellants, primarily as next of kin. I find that these records contain the appellants’ personal information.

## **Section 2(2)**

Section 2(2) of the Act provides that personal information does not include information about an individual who has been dead for more than thirty years. The appellants’ son died October 25, 1996. Since he has not been dead for more than thirty years, this section does not apply and the information about their son qualifies as his personal information.

## **INVASION OF PRIVACY**

Section 36(1) of the Act gives individuals a general right of access to their own personal information held by a government body. Section 38 provides a number of exceptions to this general right of access.

Under section 38(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.

Where, however, a record only contains the personal information of other individuals, section 14(1)(f) prohibits an institution from releasing this information unless its disclosure would not constitute an unjustified invasion of personal privacy.

In both of 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. Section 14(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

The Police submit that section 14(3)(b) applies to the information they withheld from disclosure. 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.

The appellants submit that the police decided that there was no need for an investigation into their son's death as they determined very early on that there had been no violation of law.

Many orders of this office have noted that when there is a "sudden death" in a manner similar to the appellants' son's death, the police are called in to determine whether there was any "foul play". In this regard, the attending officers conduct an investigation into the circumstances of the death, which have been found to be investigations into a possible violation of law (Orders M-1039, M-1079, M-1092, M-1115 and MO-1196, for example). I agree with the conclusions of this line of orders. In the circumstances of this appeal, I find that the presumption in section 14(3)(b) applies to the personal information which was compiled by the Police as part of their investigation into the circumstances of the appellants' son's death. This presumption still applies, even if, as in the present case, the investigation is not continued and no charges are laid (Orders P-223, P-237, P-1225, PO-1715 and MO-1197).

Regarding their exercise of discretion under section 38(b), the Police indicate that during the processing of this appeal, one of the witnesses was contacted to determine whether she would consent to disclosure of her statement. This individual did not consent and this was taken into consideration by them in deciding to withhold portions of the records from disclosure. The Police also note that in consideration of section 38(b), they provided as much information as possible to the appellants without invading the privacy interests of the other parties, including the deceased son.

I find nothing improper in their exercise of discretion in the circumstances of this appeal.

I find that neither section 14(4) nor section 16 are applicable to the information at issue. Therefore, the personal information in the records which relates to the appellants and other identifiable individuals is exempt under section 38(b), and the remaining withheld information is exempt under section 14.

**ORDER:**

I uphold the decision of the Police.

Original signed by: \_\_\_\_\_  
Laurel Cropley  
Adjudicator

\_\_\_\_\_  
October 28, 1999