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

ORDER MO-1320

Appeal MA-990312-1

Durham Regional Police Service

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NATURE OF THE APPEAL:

The appellants, a husband and wife, made a request to the Durham Regional Police Service (the Police) under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to statements provided by witnesses to a fatal motor vehicle accident. The appellants' daughter was killed when she was struck by a car in July of 1998. Their daughter was 17 years of age at the time of death. The appellants stated in their request that they were seeking this information in order that they may understand how the accident occurred, that there is no outstanding legal action, and that the matter of compensation to the family by the driver's insurance company has been settled out of court with a full release. The Police denied access to the statements in their entirety. In their decision, the Police relied on a number of provisions of the Act, relating to reports prepared in the course of law enforcement, inspections or investigations [s.8(2)(a)], and to the circumstances in which personal information may or may not be disclosed to persons other than the person to whom it relates [s.14]. In their decision, the Police also cited section 2(2) of the Act which deals with the application of the Act to the personal information of deceased persons.

This inquiry was initiated when I sent a Notice of Inquiry to the appellants, asking for their representations on the issues raised by this Appeal. I have received nothing in response, despite having granted two time extensions to the appellants. In the circumstances, I will proceed to decide these issues on the basis of the material before me.

RECORDS:

The records consist of thirteen separate witness statements, totalling 33 pages. There are statements from the driver of the car which struck the appellants' daughter, a passenger in the same car, individuals in other cars in the vicinity, and pedestrians. Some statements are handwritten on plain paper, some are typed on plain paper, some are handwritten on Durham Regional Police Service forms, and some typed on those same forms. All of the statements give details about the circumstances under which the appellants' daughter was struck by a car. There is some background information in the records, such as the addresses, occupations and ages of some of the witnesses. In the witness statements, there is also some information about matters not relating to the accident, such as how witnesses came to be present at the scene, what they were doing at the time they witnessed the events, how the accident affected them, and various observations and impressions about the surrounding circumstances. However, the heart of each of the statements, and the focus of the appellants' request, is an account of the accident and its aftermath.

CONCLUSION:

I have concluded that the Police have properly applied the provisions of the Act in denying access to the records at issue.

DISCUSSION:

The request by the appellants is not unusual. Other decisions of this office have dealt with attempts by the bereaved relatives of a deceased person to gain access to information about the circumstances of the death.

It is not uncommon for such requests, as is apparently the case here, to be made essentially for the purpose of greater understanding of the tragic event.
It is not without sympathy for the appellants' situation that I have arrived at my decision here. My role is to interpret and apply the provisions of the Act, which governs the release of information by, among others, the Police. In reviewing the decision of the Police, I am also governed by the Act, and I cannot substitute my own views on the fairness and merits of the appellants' request where the Act provides a clear direction.

In the 1999 Annual Report of the Information and Privacy Commissioner, the Commissioner recommended statutory changes which would recognize the needs of grieving families, and remove restrictions from the Act preventing them from having greater access to information about the death of a loved one. Part of that report states:

> Of the various types of appeals processed by the IPC, those involving a request for information about a deceased family member are among the most sensitive. Requests of this type are submitted to institutions (most often to local police forces or the Ontario Provincial Police) by immediate family members, or their representatives, in order to obtain information surrounding the circumstances of the relative's death.
>
> Except in certain limited circumstances, institutions must deny relatives access to this information because disclosure is presumed to be an unjustified invasion of the deceased's personal privacy under the provincial and municipal Acts.
>
> ....
>
> A statutory amendment to address this sensitive and compelling issue is clearly required, and would be supported by a broad cross section of stakeholders: requesters and appellants; Freedom of Information and Privacy Co-ordinators in both the provincial and municipal sectors, including the police community; professionals in the field of grief counseling; and the IPC.
>
> Specific language for a new subsection for section 21 (section 14 of the municipal Act) is included in the Commissioner's Recommendations section, which follows this review of key issues.

It may be that in the future, the Act will be amended to reflect the recommendations of the Commissioner. For the present purposes, however, I must apply the Act as it stands today.

PERSONAL INFORMATION

The first question I must address is whether the records contain personal information of individuals other than the appellants, for if they do, the Act provides limits on their right of access to that information.

Under section 2(1) of the Act, "personal information" is defined as "recorded information about an identifiable individual". The Act also provides a list of information which is considered to be "personal

information", but this list is not exhaustive. Having reviewed the records, I am satisfied that they contain personal information. As I have indicated, the records are eyewitness accounts of the accident which led to the death of the appellant's daughter. As such, they contain personal information about the appellants' daughter, and about the eyewitnesses and other persons at the scene.

Section 2(2) of the Act states that "personal information" does not include information about an individual who has been dead for more than thirty years. By inference, the personal information of an individual who has been dead for thirty or fewer years is protected by the Act. In other words, the Act continues to recognize the personal privacy rights of deceased persons, until thirty years after their death.

I note that although the appellants were the parents of the deceased, she was more than fifteen years of age at the time of the accident. Accordingly, the provisions of the Act permitting parents to exercise the rights of their children (and therefore to have access to the personal information of their children) do not apply [section 54(c)].

INVASION OF PRIVACY

Under the Act, individuals have a general right of access to records which contain their own personal information. There are, however, restrictions on the access which they may have to records containing the personal information of others. In the case before me, the appellants are not seeking access to records which contain their own personal information, but only that of others, including their deceased daughter. Under section 14(1) of the Act, the Police must refuse to disclose this personal information, save in specified circumstances.

One of the circumstances under which disclosure is permitted is where the consent of the individual has been obtained. Even in the absence of consent, section 14(1)(f) permits disclosure if "it does not constitute an unjustified invasion of personal privacy". 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 institution to consider in making this determination. Section 14(3) lists the types of information the disclosure of which is **presumed** to constitute an unjustified invasion of personal privacy. Most relevant to this case is section 14(3)(b), which provides:

> 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;

In the case before me, the witness statements were collected by the Police in their investigation of the accident involving the appellant's daughter (a pedestrian), and a motor vehicle. It is not apparent whether any charges were laid as a result of the investigation; nevertheless, I am satisfied that the information was compiled and is identifiable as part of an investigation into a possible violation of law. Prior decisions have

stated that the absence of charges does not negate the application of section 14(3)(b): see, for instance, Order PO-1715. Therefore, because of the application of section 14(3)(b), it must be presumed that the disclosure of the personal information contained in the witness statements is 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]. To put it another way, having found that section 14(3)(b) applies, I cannot consider whether any of the circumstances set out in section 14(2) might justify disclosure of the information in this case.

COMPELLING PUBLIC INTEREST

Section 16 may operate to permit disclosure of a record even if a provision in section 14 would otherwise prohibit such disclosure. Section 16 states:

> 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.

In Order P-984, former Adjudicator Holly Big Canoe discussed the meaning of section 16, as follows:

> In my view, the public interest in disclosure of a record should be measured in terms of the relationship of the record to the Act's central purpose of shedding light on the operations of government. 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.

There is nothing in the material before me demonstrating a compelling **public** interest which outweighs the protection of personal privacy. As worthy and deserving of support the appellants' request may be, it is essentially a private matter.

In conclusion, as the Act presently stands, it permits the Police to deny access to the witness statements.

ORDER:

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

Original signed by: July 11, 2000
Sherry Liang

Adjudicator