



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

ORDER MO-1422

Appeal MA_000288_1

Toronto Police Services Board



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NATURE OF THE APPEAL:

The Toronto Police Services Board (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the Act) for access to records containing "the names of those persons who have died between January 1, 1999 and August 31, 2000, without known next-of-kin, whose names have been made known to your organization. We also ask that you provide us with the place and date of death of the deceased and the name of the organization that contacted your organization regarding each matter."

The Police determined that access to the information sought could not be provided because they do not maintain a listing of deceased persons without known next-of-kin. They explained to the appellant that "a manual search of the records concerning deceased persons is denied pursuant to section 1, Regulation 823, of the . . . Act in that such a search would unreasonably interfere with the operations of the institution."

The Police also indicated to the appellant by telephone that there were approximately 5,000 deaths during the time period he had requested, and a manual search through individual files would be required to obtain the information to respond to the request.

The appellant appealed this decision, stating that he believes that incoming and outgoing telephone calls to and from the Police are recorded on a computer system and stored. He believes that it would be a simple matter to search for calls made by the Police to the Office of the Public Guardian and Trustee (the OPGT) to report deaths without known next-of-kin. Accordingly, he is of the view that the information he is seeking is retrievable from the existing electronic record-holdings maintained by the Police.

During mediation, the Police clarified that only calls made to 911 and to the main switchboard are taped. Calls to and from direct lines through the Police Services are not recorded.

I decided to seek representations from the Police initially. The Police responded by providing me with submissions on the issues raised in the Notice of Inquiry. The Police consented to sharing these representations with the appellant in their entirety. The appellant also made submissions, which were in turn shared with the Police, who then provided me with additional reply representations.

DISCUSSION:

IS THE INFORMATION SOUGHT CAPABLE OF BEING PRODUCED FROM MACHINE READABLE RECORDS?

The Police have provided me with submissions outlining the capabilities of its computerized filing system. They indicate that:

Although the names, places and dates of death of persons whose demise required the attendance of the Toronto Police are computerized, the information primarily sought by the appellant (that is, whether a next-of-kin was identified for a deceased person) is not capable of being produced from a machine readable record. The computerized reports concerning sudden deaths contain no specific field to capture whether or not a next-of-kin of a deceased person was known. A person involved in a sudden death occurrence - but not their relationship to the deceased - would only be noted in the computerized entry in those instances where that person:

- (a) reported the sudden death; and/or
- (b) is listed as the complainant or a witness; and/or
- (c) is listed as a suspect in the death of the person.

In order to determine the nature of the relationship, if any, which existed between any individual named in a computerized sudden death occurrence and the deceased, the "hard copy" of that occurrence must be manually retrieved and studied.

...

In order to create a responsive machine readable record from the already-existing police records, the data base itself would have to be altered to create a field to capture the fact that a next of kin was or was not known and such information added to each entry. Then each sudden death occurrence would have to be manually retrieved, searched for the information, and each entry modified to reflect the result.

With respect to information relating to contact between the Police and the OPGT, the Police submit that they:

... do not keep a list of those persons about whom the Public Guardian and Trustee has been notified. As detailed above, to maintain such a list would serve no institutional purpose, as such incidents are treated on a case by case basis and require careful individual investigation. Should the Police compile such a list for investigative purposes, it would constitute a breach of the ... *Act*.

...

... [The Police] do not report all sudden death occurrences to the Public Guardian and Trustee - as is made clear by the Police Service procedures provided in our representations - only those sudden deaths for which a next of kin could not be identified are reported to the Public Guardian and Trustee. As detailed above, the Public Guardian and Trustee is the legally

construed government authority for this purpose. The information is released to them pursuant to section 32 of the *Act*, and is done so by the officer at the time of the investigation.

Toronto Police Service Procedure No. 09-01, which is referred to above, specifically directs officers to contact the OPGT in situations where:

- a relative cannot be located in the Province of Ontario
- known estate is valued at more than \$5000.00
- executor or administrator of the Will cannot be located
- executor named in the Will is a minor
- in doubt or when conditions are other than those listed above.

The Police take the position that they have fulfilled their legal obligations when, having been unable to locate a next of kin, they notify the OPGT. However, they stress that no machine readable record exists which would identify those situations where the investigating officer has in fact made that notification. The Police rely on section 1 of Regulation 823, R.R.O. 1990, arguing that the creation of a record containing the information sought by the appellant is not possible using electronic means and that retrieving the information from the paper copies of sudden death occurrence reports would unreasonably interfere with its operations. Section 1 of Regulation 823 states:

A record capable of being produced from machine readable records is not included in the definition of "record" for the purposes of the Act if the process of producing it would unreasonably interfere with the operations of an institution.

In his representations, the appellant has attempted to narrow the scope of his request to include only "the names of persons reported by the Toronto Police to the Public Guardian and Trustee in accordance with Toronto Police Service Procedure No. 09-01, between January 1, 1999 and August 31, 2000" or some similar dates in the near future. His submissions do not, however, address the issue of whether the information which he is seeking is (referring only to those situations where the investigating officer contacted the OPGT in accordance with Procedure 09-01), in fact, retrievable from the existing Police record-keeping system.

Based on the submissions of the Police and the explanations provided as to the capabilities and limitations of its existing electronic record-keeping system, I am satisfied that the Police are unable to create a record which captures the information sought by the appellant from its current machine readable record-storage system. I find that it would not be possible for the Police to electronically retrieve information relating to contacts between its officers and the OPGT pursuant to Procedure 09-01 using the existing database.

Because fields capturing the information sought by the appellant simply do not exist, I concur with the position of the Police and find that it is impossible to retrieve this information without modifying significantly the existing fields which capture information entered by the investigating officers electronically. The information as it exists today resides only in the paper copies of each occurrence report relating to a sudden death. Without performing a manual search of all of these sudden death occurrence reports, I find that it would be impossible to determine the information sought by the appellant as originally framed in his request, or as narrowed in his representations.

Because I have found that it would not be possible to create a record responsive to either the original or the modified request from the appellant from the machine readable record-holdings of the Police, it is not necessary for me to determine whether it would unreasonably interfere with the operations of the Police for it to do so.

ARE THE POLICE OBLIGED BY SECTION 17 OF THE ACT TO CREATE A RECORD RESPONSIVE TO THE REQUEST?

Section 17 of the *Act* states:

- (1) A person seeking access to a record shall,
 - (a) make a request in writing to the institution that the person believes has custody or control of the record;
 - (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record; and
 - (c) at the time of making the request, pay the fee prescribed by the regulations for that purpose.
- (1.1) If the head of the institution is of the opinion on reasonable grounds that the request is frivolous or vexatious, subsection (2) does not apply to the request.
- (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

The Police argue that it is well-established that the *Act* does not oblige institutions to create a record responsive to a request where one does not already exist. Rather, the *Act* and section 1 of Regulation 823, R.R.O. 1990, require that an institution grant access to

information which already exists in its record-holdings or create records containing information which can be retrieved from its machine-readable records.

The appellant has not addressed the question of whether section 17 imposes an obligation on the Police to create a record containing the type of information which he is seeking from the data which it currently maintains. Essentially, he argues that because of the heir tracer service which he provides, for a fee, to the public, this information ought to be made available to him.

In Order 99, former Commissioner Sidney Linden made the following observation with respect to the obligations of an institution to create a record from existing information which exists in some other form:

While it is generally correct that institutions are not obliged to "create" a record in response to a request, and a requester's right under the *Act* is to information contained in a record existing at the time of his request, in my view the creation of a record in some circumstances is not only consistent with the spirit of the *Act*, it also enhances one of the major purposes of the *Act* i.e., to provide a right of access to information under the control of institutions.

In the present circumstances, I find that the Police have provided the appellant with a reasonable explanation as to why they are unable to recover the information which he is seeking in the form described in his original request and in his representations. In my view, as has been established and recognized in many previous orders, section 17 does not, as a rule, oblige an institution to create a record where one does not currently exist. In addition, I find that the circumstances present in this appeal are not such as to warrant the creation of a record. The situation described by former Commissioner Linden in Order 99 is not present in this appeal since the creation of a record containing the information sought by the appellant would not be consistent with the privacy protection purpose set out in section 1(b) of the *Act* which describes one of the primary purposes of the *Act* as the protection of privacy of individuals with respect to personal information about themselves held by institutions. I find that the present circumstances are not such as to oblige the Police to create a record containing the requested information.

ORDER:

I dismiss the appeal.

Original Signed By: _____ April 20, 2001
Donald Hale
Adjudicator