



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

ORDER MO-1429

Appeal MA_000338_1

City of Toronto



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NATURE OF THE APPEAL:

The City of Toronto (the City) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to ambulance and police records pertaining to a 911 call and a sudden death. The requesters, parents of the deceased individual, specifically sought information on the ambulance and police response and departure times, their daughter's condition at the time, a "description of procedures administered", and "any pertinent details".

The City located 1 responsive record which consists of 8 pages of Ambulance Call Reports and an attachment. The City granted access to the attachment only. In denying access to the Ambulance Call Reports, it relied on the exemption in section 14(1) (invasion of privacy) of the *Act*. The request for police records was transferred to the Toronto Police Services Board.

The requesters, now the appellants, appealed the City's decision.

During mediation of this appeal, the appellants received from the City and other named agencies the times of the 911 calls, the response times for the police, and the time the ambulance left the station and departed for the hospital.

I sent a Notice of Inquiry (the Notice) to the City initially, setting out the facts and issues in this appeal. The City returned a response and in it indicated that the ambulance arrival time at the scene had been disclosed to the appellants. The Notice was then sent to the appellants, together with the City's complete representations. The outstanding issues remaining in dispute are the condition of the appellants' daughter upon arrival of the ambulance, a description of the medical procedures administered, and any other pertinent details in the Ambulance Call Reports.

RECORDS:

The record at issue in this appeal consists of two Ambulance Call Reports totalling 8 pages.

DISCUSSION:

The nature of the appellants' request and appeal 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 in the situation before me, to be made essentially for the purpose of greater understanding of the tragic event.

In Order MO-1320, which dealt with a request for information from the Police relating to a sudden death, Adjudicator Sherry Liang stated:

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.

While hopefully in the future the *Act* will be amended to reflect the recommendations of the Commissioner, I must apply the *Act* as it stands today.

PERSONAL INFORMATION

The first issue to be determined is whether the record contains personal information and if so, to whom that personal information relates.

Under section 2(1) of the *Act*, "personal information" is defined as "recorded information about an identifiable individual". The City submits that the Ambulance Call Reports contain details about the physical and medical condition of the appellants' daughter as observed and evaluated

by the ambulance crew and the medical treatment she received. As all the information contained in the record pertains to the appellants' daughter, the information is "about" an identifiable individual [paragraph (b)], and falls within the definition of "personal information".

The daughter has been deceased for less than thirty years, therefore, the information in the record qualifies as the daughter's personal information.

INVASION OF PRIVACY

Introduction

Where a requester seeks personal information of other individuals, section 14(1) of the *Act* prohibits an institution from disclosing this information unless disclosure would not constitute an unjustified invasion of the personal privacy of these individuals.

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. Section 14(4) refers to certain types of information the disclosure of which 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].

A section 14(3) presumption can be overcome if the personal information at issue falls under section 14(4) of the *Act* or if a finding is made under section 16 of the *Act* that a compelling public interest exists in the disclosure of the record in which the personal information is contained which clearly outweighs the purpose of the section 14 exemption.

In this instance, the only exception to the section 14(1) exemption which could apply is section 14(1)(f). The City has cited the presumption of an unjustified invasion of privacy at section 14(3)(a) to support its position that section 14(1)(f) does not apply. Those sections read:

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

(f) if the disclosure does not constitute an unjustified invasion of personal privacy.

(3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

(a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;

Representations

As stated earlier, the City submits that:

... the information at issue describes the daughter's medical diagnosis, condition, evaluation and treatment including the severity of her case, the medicines or procedures she was treated with and by whom ... , as well as her reactions to the medicines and /or procedures.

The City also submits that the circumstances of this appeal are similar to those in Order PO-1735, which involved a request for access to a specific Ambulance Call Report:

In that case, Senior Adjudicator David Goodis found that much of the information completed on the Ambulance Call Report qualified as information which fell within the meaning of section 21(3)(a) [the provincial equivalent of section 14(3)(a)]. Mr. Goodis further found that since none of the section 21(4) factors of the provincial Act applied in the circumstances, the information was exempted under section 21(1).

The appellants returned no response, but have indicated in their appeal letter that the "Ambulance Report would bring a complete closure" for their family.

Presumption at section 14(3)(a) - *medical information*

In Order PO-1735, referred to above, the Ministry of the Solicitor General and Correctional Services denied the appellants access to an ambulance report concerning their deceased daughter. It submitted that disclosure of the record was presumed to be an unjustified invasion of the daughter's privacy under the provincial equivalent of section 14(3)(a). The categories listed in the Ambulance Call Report which were considered by Senior Adjudicator Goodis are the same as those in this appeal; that is, "Ambulance Administration, Patient identification, Clinical Information, Hospital Administration, Remarks and/or procedures continued, Final Assessment by Crew, Ambulance Administration."

I have reviewed the Ambulance Call Reports. Much of the information contained in the "Clinical Information" and "Final Assessment by Crew" categories, and some of the information in the "Ambulance Administration" category, qualifies as information relating to the daughter's medical diagnosis, condition or evaluation. As in Order PO-1735, I find that this information falls within the section 14(3)(a) presumption of an unjustified invasion of personal privacy.

Since none of the section 14(4) factors apply in the circumstances, I find that this information is exempt under section 14(1) of the *Act* and disclosure of the record would constitute an unjustified invasion of personal privacy.

Severance

Where a record contains information, section 4(2) requires a head to disclose as much of the record as can reasonably be severed without disclosing the exemption information. A head will not be required to sever the record and disclose portions where to do so would reveal only “disconnected snippets”, or “worthless”, “meaningless” or “misleading” information. Further, severance will not be considered reasonable where an individual could ascertain the content of the withheld information from the information disclosed [Order PO-1663, *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner)* (1997), 102 O.A.C. 71 (Div. Ct.)].

I am satisfied that the record at issue cannot reasonably be severed. To do so would reveal only “disconnected snippets”, or “worthless”, “meaningless” or “misleading” information, such as information of an administrative nature (i.e. the type of warning system the ambulance crew used and the ambulance crew numbers: see Order PO-1735). Accordingly, I find that the information cannot be severed from the record for the purpose of disclosure.

To conclude, the record at issue is exempt under section 14(1) in its entirety.

ORDER:

I uphold the City’s decision to deny access to the requested record on the basis of section 14(1) of the *Act*.

Original signed by: _____ May 11, 2001
Dora Nipp
Adjudicator