



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

ORDER MO-1409

Appeal MA_000291_1

Hamilton Police Services Board



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The Hamilton Police Services Board (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for a copy of the telephone records of their deceased daughter.

The Police identified records relating to two telephone numbers, and denied access to these records on the basis of the following exemptions:

- Sections 8(2)(a) and (c) - law enforcement
- Section 14(1) - invasion of privacy. The police relied on the presumption and factors in sections 14(3)(b), 14(2)(e), 14(2)(f), 14(2)(i) in support of this exemption claim.

The requesters (now the appellants) appealed the Police's decision.

During mediation, the appellants acknowledged that neither of them is the executor or administrator of their daughter's estate and that the telephone records are not required for the purpose of administering the estate. Therefore, section 54(a) of the *Act* is not applicable.

Also during mediation, the appellants identified a third telephone number used by their daughter and, on that basis, maintained that further responsive records not identified by the Police should exist. I added the issue of whether the Police had conducted an adequate search for records to the scope of this appeal.

I sent a Notice of Inquiry to the Police initially, and I received representations in response. The Police withdrew their reliances on section 8(2)(c) in the representations, so it is no longer at issue in this appeal. The Police also identified section 8(1)(h) as a new exemption claim for the first time in their representations. Because of the manner in which I will dispose of the issues in this appeal, it is not necessary for me to determine whether the Police should be permitted to raise this discretionary exemption claim at this late stage of the appeal.

I then sent the Notice to the appellants, along with the non-confidential portions of the Police's representations. The appellants provided representations in response.

DISCUSSION:

REASONABLE SEARCH

The records identified by the Police relate to two telephone numbers. The appellants maintain that their daughter had three telephone numbers, and that records relating to this third number should exist.

In appeals involving a claim that further responsive records exist, the issue to be decided is whether the Police have conducted a reasonable search for the records as required by section 17 of the *Act*. If I am satisfied that the search carried out was reasonable in the circumstances, the decision of the Police will be upheld. If I am not satisfied, further searches may be ordered.

Where a requester provides sufficient detail about the records which he/she is seeking and the Police indicate that further records do not exist, it is my responsibility to ensure that the Police have made a reasonable search to identify any responsive records. The *Act* does not require the Police to prove with absolute certainty that further records do not exist. However, in my view, in order to properly discharge its obligations under the *Act*, the Police must provide me with sufficient evidence to show that it has made a **reasonable** effort to identify and locate all responsive records.

The Freedom of Information and Privacy Co-ordinator for the Police makes the following submissions regarding the searches undertaken for responsive records:

The search for the phone records was carried out internally by [a named police officer]. He is the investigator that has been dealing with the appellants' in regards to their complaints and thus he had the investigative case files in his office. [The named police officer] brought the folder with the phone records and turned it over to myself. I made copies of these records for my files.

While writing these representations relating to the reasonable search, I attended the Professional Standards Branch and searched the investigative case files for any further phone records that may exist and there were no other phone records. Please note that I did view the search warrants for the phone numbers. There were only two search warrants for two phone numbers. I also spoke to [the named police officer] again and he advised that there were no other phone records.

The appellants' argument that further records should exist appears to be based on the knowledge that their deceased daughter had three telephone numbers.

The telephone records within the custody and control of the Police were obtained from telephone companies pursuant to search warrants. As the Police explain, there are only two warrants relating to two telephone numbers. If the Police had obtained a third warrant and received records relating to a third telephone number, these records would be responsive to the appellants' request. However, it would appear that records relating to this third telephone number were not covered by a warrant and, as a result, no records relating to this number came into the possession of the Police. I find the explanation provided by the Police in this regard to be credible and reasonable.

The appellants' believe that records relating to this third telephone number should exist because the Police should have requested this information when they conducted their investigation into the death of their daughter. Clearly, I am not in a position to comment on the conduct of the Police in their investigation. My role under the *Act* is to determine whether the Police made reasonable efforts to search for and identify all records already within their custody and control

that are responsive to the appellants' request and, based on the representations provided by the Police, I find that they did.

This part of the appellants' appeal is dismissed.

PERSONAL INFORMATION/INVASION OF PRIVACY

The section 14(1) personal privacy exemption only applies to "personal information". "Personal information" is defined in section 2(1) of the *Act*, in part, to mean recorded information about an identifiable individual, including the address, telephone number, fingerprints or blood type of the individual [paragraph (d)].

The Police submit that the information at issue is personal information.

The information in the records at issue is clearly personal information as defined in s. 2(1) of [the *Act*], in that the information is a list of phone numbers, but not limited to, the deceased. These lists include all of the people whom the deceased contacted and is inherently personal. Personal information as defined by the *Act* includes the address, telephone number, fingerprints or blood type of the individual. Therefore, the records at issue are definitely personal information as defined by the *Act*. Again, this information forms part of an investigation into the death of [the appellants' daughter]. The records at issue are the phone accounts from the deceased's personal phone numbers.

In accordance with s.2(2) of [the *Act*], an individual must be dead for more than 30 years before information about that individual no longer qualifies as "personal".

I concur.

The records are printouts of telephone bills which contain the appellants' daughter's name and address, two of her telephone numbers, and a listing of various other telephone numbers called through the daughter's two numbers. This information falls squarely within the scope of paragraph (d) of the definition of "personal information". Accordingly, I find that the records contain the personal information of the appellants' daughter and the other individuals whose telephone numbers appear on the records. The records do not contain any personal information of either of the appellants.

Because the appellants' daughter has not been dead for more than 30 years, her information is still considered personal information under the *Act*.

Where a requester seeks the personal information of another individual, section 14(1) of the *Act* prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) through (f) of section 14(1) applies. The only section with potential application in the circumstances of this appeal is section 14(1)(f) which reads:

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

if the disclosure 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 privacy. Section 14(2) provides some criteria for the institution to consider in making this determination, and section 14(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy. The Divisional Court has stated that once a presumption against disclosure under section 14(3) 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).

Section 14(3)(b) of the *Act* reads:

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 Police submit:

You will note that the initial police contact commenced with a sudden/violent death report relating to [the appellants' daughter]. As a result of that complaint, an investigation into the circumstances of [the appellants' daughter's] death with a view to determining whether there was a possible violation of the law proceeded. The records at issue formed part of that investigation and were compiled and are identifiable as part of the above-referenced police investigation, which are both for the purpose of determining whether there was a violation of the Criminal Code of Canada or other relevant legislation. As such, s. 14(3)(b) is applicable.

The appellants' representations did not specifically address the requirements of section 14(3)(b).

I accept the position put forward by the Police.

This Office has on numerous occasions dealt with appeals from requests by appellants seeking information about deceased family members who died suddenly and unexpectedly. In cases such as this, the Police undertake an investigation to determine whether the death involved a violation of the *Criminal Code*, which brings any records created or compiled in that context within the scope of section 14(3)(b) (see, for example, Orders PO-1777, MO-1352, MO-1330 and MO-1365). I find that the records at issue in this appeal were compiled and are identifiable as part of

the Police's sudden death investigation in the death of the appellant's daughter, and as such the presumption in section 14(3)(b) applies.

I also find that none of the information contained in the records falls within the exceptions listed in section 14(4) of the *Act*, and the appellant has not raised the application of section 16.

Therefore, the records qualify for exemption under section 14(1) of the *Act*.

Because of my findings, it is not necessary for me to consider section 8(2)(a) or whether the Police should be entitled to rely on section 8(1)(l) of the *Act*.

ORDER:

I uphold the decision of the Police.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

_____ March 14, 2001