



**Information and Privacy  
Commissioner/Ontario**

**Commissaire à l'information  
et à la protection de la vie privée/Ontario**

# **ORDER MO-1556**

**Appeal MA-010332-1**

**South Simcoe Police Service**



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/Téloc: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

## **NATURE OF THE APPEAL:**

The appellant is a lawyer acting on behalf of the family of a woman who was killed in a car accident (the deceased). The appellant submitted a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the South Simcoe Police Service Board (the Police) for access to a records relating to the accident.

The Police identified records responsive to the request, and denied access to them pursuant to the exemption at section 8 (law enforcement) of the *Act*. In particular, the Police referred to section 8(1)(a) (interference with a law enforcement matter), 8(1)(b) (interference with a law enforcement investigation), 8(1)(f) (deprivation of the right to a fair trial) and 8(2)(a) (law enforcement report). The Police also stated:

Please note that our records indicate that this occurrence is presently before the courts. This institution takes the view that any premature disclosure of the records may interfere with the preparation of the matter for trial.

The appellant appealed the Ministry's decision.

During the mediation stage of the appeal, the Police wrote to the appellant as follows:

. . . Since our last correspondence, the charges relating to the motor vehicle accident have now been dealt with. This new Decision Letter reflects the issues as they now stand.

Access to a copy of the report is denied. The information of the deceased party can only be accessed per Section 54 of the [*Act*] which allows rights of access to someone else's personal information as a personal representative only in the following circumstances.

Section 54 states:

Any right or power conferred on an individual by this Act may be exercised:

- (a) if the individual is deceased, by the individual's personal representative if exercise of the right or power relates to the administration of the individual's estate.

In order to obtain a copy of the deceased's information, court documents must be produced which state legal status of administrator or executor. The reason for accessing the report would be to administer the estate. We must therefore deny your request for access.

Access is denied pursuant to Section 14 of the *Act*. The following section was considered in making this decision:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information

14(3)(b) 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.

As a result of the revised decision letter of the Police, the only exemption remaining at issue is section 14.

This office sent a Notice of Inquiry setting out the issues in the appeal initially to the Police, which provided representations in response. This office then sent the representations of the Police, together with the Notice of Inquiry, to the appellant. The appellant did not provide representations in response.

#### **RECORDS:**

The records at issue consist of an occurrence report, supplementary occurrence reports, correspondence, will say statements and witness statements.

#### **DISCUSSION:**

#### **PERSONAL INFORMATION**

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

The records contain information about the deceased and the accused, and their involvement in the events leading up to and following the accident. In addition, the records contain information relating to individual witnesses, including their names, addresses, telephone numbers and other information regarding their actions during the events in question. I find that this information is “about” these individuals and, therefore, the records contain the personal information of the deceased, the accused and individual witnesses.

Section 2(2) provides that personal information does not include information about an individual who has been dead for more than thirty years. Because the deceased has been dead for less than thirty years, the information in the records that is about her continues to qualify as her personal information.

#### **RIGHT OF ACCESS BY A PERSONAL REPRESENTATIVE**

##### **Introduction**

I will first consider whether, under section 54(a) of the *Act*, the appellant and/or any of his individual clients are entitled to exercise the rights of the deceased under the *Act*.

Section 54(a) states:

Any right or power conferred on an individual by this Act may be exercised,

...if the individual is deceased, by the individual's personal representative if exercise of the right or power relates to the administration of the individual's estate...

Under this section, the appellant and/or his clients can exercise the rights of the deceased under the *Act* if they can demonstrate that: (a) they are the personal representative (s) of the deceased; and (b) the rights they wish to exercise relate to the administration of the deceased's estate. If the appellant and/or his clients meet the requirements of this section, then they are entitled to have the same access to the personal information of the deceased as the deceased would have had; the request for access to the personal information of the deceased will be treated as though the request came from the deceased herself under section 36(1) of the *Act* (see, for example, Orders MO-1315 and MO-1525).

### **Personal representative**

In Order M-919, former Adjudicator Anita Fineberg reviewed the law with respect to section 54(a) and came to the following conclusions:

The meaning of the term "personal representative" as it appears in section 66(a) of the *Freedom of Information and Protection of Privacy Act*, the equivalent of section 54(a) of the *Act*, was considered by the Divisional Court in a judicial review of Order P-1027 of this office. In *Adams v. Ontario (Information and Privacy Commissioner)* (1996), 136 D.L.R. (4th) 12 at 17-19, the court stated:

Although there is no definition of "personal representative in the *Act*, when that phrase is used in connection with a deceased and the administration of a deceased's estate, it can have only one meaning, which is the meaning set out in the definition contained in the *Estates Administration Act*, R.S.O. 1990, c. E.22, s.1, the *Trustee Act*, R.S.O. 1990, c. T.23, s.1; and in the *Succession Law Reform Act*, R.S.O. 1990, c. S.26, s.1:

1(1) "personal representative" means an executor, an administrator, or an administrator with the will annexed.

Based on the court's analysis set out above, I am of the view that a person, in this case the appellant, would qualify as a "personal representative" under section

54(a) of the *Act* if he or she is “an executor, an administrator, or an administrator with the will annexed with the power and authority to administer the deceased's estate”.

I adopt the analysis of former Adjudicator Fineberg for the purposes of this appeal.

As indicated above, the appellant made no representations on this or any other issue in this appeal.

The Police submit:

Because there is no will, and the client has no legal authority to settle the estate, he is not entitled to a full copy of the motor vehicle accident report nor the reconstruction report. As neither the client nor the law firm is an executor, [an] administrator, or an administrator with the will annexed with the power and authority to administer the deceased's estate, they cannot qualify as the personal representative of the deceased.

In the absence of any representations from the appellants, or any other evidence indicating that either the appellant or any of his individuals clients are the deceased's personal representative, I find that section 54(a) does not apply. In the circumstances, it is not necessary for me to consider the second part of the test under this section, that is whether the exercise of the right of access relates to the administration of the deceased's estate

## **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].

## Relevant Provisions

In this case, the only exception to the section 14(1) exemption which could apply is section 14(1)(f). The Police have cited the presumption of an unjustified invasion of privacy at 14(3)(a) to support their 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,

(b) 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;

## Representations

The Police submit:

Any release of personal information relating to the other involved driver would contravene Section 14(3)(b) . . . as it was compiled as part of the same investigation into the law enforcement matter, in this case the fatal motor vehicle accident . . .

According to Order M-841 in which documents exempted pursuant to Section 14(3)(b), it was stated that “the records at issue are documents which are generated upon the completion of an investigation at which time charges are laid”. In this instance the decision of the Niagara Regional Police Services Board (the police) was upheld.

In this particular occurrence, it became a law enforcement matter when two motor vehicles collided. All the information was compiled to investigate the accident to see if one of the vehicles might have been at fault and to determine the reason. At the completion of the investigation, a charge was issued under the Highway Traffic Act.

## Findings

In my view, it is clear that the Police compiled all of the information in the records at issue as part of an investigation into a possible violation of law, specifically the *Highway Traffic Act*.

Therefore, the information in the records falls within the scope of the section 14(3)(b) presumption, and is thus exempt under section 14(1).

Although the records contain some minimal information that arguably does not qualify as personal information, I am satisfied that it is not reasonably severable in the circumstances.

### **ADDITIONAL RECORD**

The Mediator's Report refers to an accident reconstruction report (the report) as a record at issue in this appeal. In addition, the Notice of Inquiry, prepared by another adjudicator, seeks representations on the report. However, there is nothing in the material before me to indicate that the Police ever made a decision under the *Act* with respect to the report. In addition, based on my review of the file, it is unclear whether or not the report was within the scope of appellant's appeal, or whether or not the appellant is still seeking this record. In their representations, the Police take the position that the report should not be an issue in this appeal.

In the circumstances, I decline to make any ruling with respect to the report, without prejudice to the appellant's right to file a new request for the report, and to appeal any decision of the Police in this regard.

### **ORDER:**

I uphold the decision of the Police to deny access to the records on the basis of section 14 of the *Act*.

Original Signed By: \_\_\_\_\_

David Goodis

Senior Adjudicator

July 8, 2002 \_\_\_\_\_