



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER MO-1646**

**Appeal MA-020286-1**

**Niagara Regional 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/Télé: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

## **NATURE OF THE APPEAL:**

The requester (now the appellant) made a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the Niagara Regional Police Services Board (the Police) for access to records concerning the death of her husband. The appellant indicated that, for insurance purposes, she needed evidence to indicate that her husband's death was accidental.

The Police located records responsive to the request and denied access to them on the basis of the personal privacy exemption at section 14 of the *Act*, with reference to sections 14(1)(a), 14(1)(f) and 14(3)(b).

The Police also stated:

Information concerning a deceased person is considered the "personal" information of the deceased and may not be released for a period of 30 years, unless in accordance with Section 54(a) of the [*Act*], which 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;

Personal information of the deceased may only be released to the executor or trustee of the deceased's estate, and only if it can be shown that the information is required in the administration of the deceased's estate.

You may wish to contact the Coroner's office, as the Coroner has the discretion of releasing certain information to the next of kin of the deceased. Although the Coroner will not release our police report to you, he may release information that his office may hold on file in relation to [your husband's] death.

The appellant appealed the decision of the Police to this office. In her letter of appeal she stated:

... I am the sole beneficiary of my husband's estate as per the attached handwritten will . . .

As per the attached letter from [a named insurance company], they still require a copy of the police report, as the coroner's report did not specifically state that [my husband's] death was an accident . . .

Mediation did not resolve the issues, and the appeal moved to the adjudication stage of the process.

A Notice of Inquiry was sent to the Police, inviting representations on whether section 14 applied to the information in the records, and on whether section 54(a) applied in the

circumstances. The Police provided representations, and the Notice of Inquiry was sent to the appellant, along with a severed copy of the Police's representations. The appellant provided representations in response.

## **RECORDS:**

The records at issue consist of a sudden death report, a property report and supplementary reports.

## **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 Police take the position that the records contain the personal information of the deceased, and that portions of the records also contain the personal information of another identifiable individual.

The records contain information concerning the deceased, and were created in the context of the investigation into his death. The records also contain information relating to another individual including his name, addresses, telephone number and other information, including a statement he made to the Police. I find that this information is "about" these individuals and, therefore, the records contain the personal information of the deceased and another individual.

There is no suggestion that the records contain the personal information of the appellant, and I find that they do not contain her personal information.

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 him continues to qualify as his personal information.

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

#### **Introduction**

I will first consider whether, under section 54(a) of the *Act*, the appellant is 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 can exercise the rights of the deceased under the *Act* if she can demonstrate that: (a) she is the personal representative of the deceased; and (b) the rights she wishes to exercise relate to the administration of the deceased's estate. If the appellant meets the requirements of this section, then she is 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 himself under section 36(1) of the *Act* (see, for example, Orders MO-1315, MO-1525 and MO-1556).

### **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".

In addition, previous orders have determined that it is not sufficient for the purpose of section 54(a) that an individual be considered the "personal representative". That section also requires that the exercise of the right of the personal representative relates to the administration of the individual's estate. Previous orders have determined that section 54(a) should be interpreted narrowly to include only records which "the personal representative requires in order to wind up the estate". (See Order M-1075)

I adopt the analysis set out above for the purpose of this appeal.

The Police address these issues in their representations as follows:

Section 54(a) does not apply in the circumstances of this appeal. In [the] initial contact with the requester, she was asked if she was the administrator of her late husband's estate and if she required the information to administer the estate. The requester stated that this was the case and subsequently supplied the police with a copy of the Will of her late husband. The requester further stated that she needed the information for insurance purposes.

The Will showed the requester to be the beneficiary of her late husband's estate, however, no proof was supplied indicating that the requester was the administrator of that estate, nor was proof received that the estate was the beneficiary of the insurance policy. As such ... [section] 54(a) does not apply in this case. ... Section 54(a) was cited [by the Police] ... to demonstrate to the requester what [was] required in order for her to *be* considered the personal representative of her late husband.

The appellant made no representations on the issue of the application of section 54(a), and there is no indication that the appellant is the "executor, administrator, or administrator with the will annexed with the power and authority to administer the deceased's estate". Accordingly, I have not been provided with sufficient information to indicate that the appellant is the deceased's personal representative. I therefore find that section 54(a) does not apply in this appeal. Because of this finding, it is not necessary for me to determine whether the exercise of the right of the personal representative relates to the administration of the individual'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). In their representations the Police cite the presumptions of an unjustified invasion of privacy at sections 14(3)(a) and (b) 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 if the personal information,
  - (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
  - (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

In their representations, the Police identify that section 14(3)(a) applies because the personal information relates to “a medical, psychiatric, or psychological history, condition, treatment or evaluation of the deceased”. The Police also submit that the personal information was compiled and is identifiable as part of an investigation into a possible violation of law. The Police then state:

...the response of the police in Orders MO-1325 and MO-1449 applies in the circumstances of this appeal. In those orders the police state:

The focus of a law enforcement investigation into a sudden death is twofold: to endeavour to establish the factual cause of the event, and further, to endeavour to rule out any other possible causes (i.e., foul play). Although a decision with respect to the cause of death lies with the Coroner, the police investigation plays a key role in the determination. The fact that no criminal proceedings were commenced by the Police does not negate the applicability of section 14(3)(b). This section only requires that there be an investigation into a possible violation of law.

The appellant's representations state:

I am requesting information about my late husband's ... death because I am a beneficiary of his Accidental Death Insurance Policy. I ... contacted the Insurance Company and [was told] I might receive benefits from that policy ... if I have a Police Report about my late husband's death.

### **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 – that is – an investigation into the death of the deceased. Some of the information also relates to the deceased's medical condition or treatment. Therefore, the information in the records falls within the scope of the section 14(3)(a) and (b) presumptions, and is thus exempt under section 14(1).

Although I am sympathetic to the appellant's situation and the factors she raises in her representations, I am constrained from making a different finding where a presumption under section 14 clearly applies. In Order MO-1320, Adjudicator Sherry Liang dealt with an appeal involving a request by parents for information about their deceased daughter. The daughter had died in a motor vehicle accident and the parents were denied access to the statements of witnesses at the scene of the accident. Adjudicator Liang made the following comments in that order which I feel are relevant to the present appeal:

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 *Act*.

....

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.

I concur with the statements made by Adjudicator Liang. I also note that, although the appellant is not entitled to access to the records under the *Act* on the basis of the information provided to me, the appellant is seeking access to records for the purpose of establishing a legal entitlement to identified benefits. In these circumstances, there may be other legal avenues open to the appellant through which she may obtain the relief she is seeking.

**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: \_\_\_\_\_  
Frank DeVries  
Adjudicator

\_\_\_\_\_ May 8, 2003