



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-1722

Appeal MA-030149-1

Niagara Regional Police Services Board



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NATURE OF THE APPEAL:

The Niagara Regional Police Services Board (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following information:

...all documents, communications and other reports related to the investigation into the fatal collision in Welland involving [a deceased individual]. Specifically, I would like access to the results of [the deceased person's] toxicology tests and his blood-alcohol reading. This request relates to documents going back to October 2002.

The Police located the responsive records and denied access to them, claiming the application of the invasion of privacy exemption in section 14(1) of the *Act*, in conjunction with the presumptions in sections 14(3)(a) (information relating to a medical history, diagnosis, condition or evaluation) and (b) (information compiled as part of an investigation into a possible violation of law).

The requester, now the appellant, appealed the decision of the Police to deny access to the records.

During the mediation stage of the appeal, the Police provided the appellant with a brief description of the records. The appellant advised the mediator that she did not wish to pursue access to any of the responsive records that consist of media releases. Accordingly, the media releases identified as responsive to the request are no longer at issue. Finally, the appellant raised the possible application of the public interest override provision in section 16 of the *Act*.

As further mediation was not possible, the appeal was moved to the adjudication stage of the process. I decided to seek the representations of the Police initially. The Police submitted representations, the non-confidential portions of which were then shared with the appellant, along with a copy of the Notice of Inquiry. I did not receive any representations from the appellant.

RECORDS:

The records at issue in this appeal consist of the following:

Record #3 - Incident Report

Record #4 - Statements

Record #5 – Officers' Rough Notes from Central Traffic Unit File

Record #7 - Incident History (Computer-generated printout from Communications Unit)

Record #8 - Coroners' Case Rounds

DISCUSSION:

PERSONAL INFORMATION/INVASION OF PRIVACY

Introduction

The section 14(1) personal privacy exemption applies only to information that qualifies as “personal information”, as defined in section 2(1). Personal information is defined, in part, to mean recorded information about an identifiable individual, including the individual's name where it appears with other personal information relating to him/her or where the disclosure of the name would reveal other personal information about the individual [paragraph (h)].

The Police submit that:

The record[s] at issue [were] created in the context of the investigation into a fatal motor vehicle collision involving five individuals. As such, in the words of Assistant Commissioner Tom Mitchinson, it is ‘about’ the involved individuals and, therefore, contains their personal information. Portions of the record[s] also contain the personal information of witnesses to this accident as well as the personal information of individuals who provided information to the police in relation to the actions of involved parties prior to the collision. This information includes names, addresses, telephone numbers and statements.

I have reviewed the records at issue and find that they contain the personal information of the individuals who were involved in the motor vehicle accident, as well as other identifiable individuals who provided information to the Police as witnesses to the accident or otherwise. This personal information includes the names, addresses, dates of birth, telephone numbers, family status, employment history, the views or opinions of an individual about another individual and the individuals’ names which appear with other personal information relating to them.

I further find that none of the records contain the personal information of the appellant.

Where a requester seeks 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 exception which may have application in the present 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.

Section 14(1)(f)

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. [Order PO-1764]

If none of the presumptions in section 14(3) applies, the institution must consider the application of the factors listed in section 14(2), as well as all other considerations that are relevant in the circumstances of the case.

Representations of the Police

The Police rely on the "presumed unjustified invasion of personal privacy" in sections 14(3)(a) and (b) of the *Act*, which read:

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;

Section 14(3)(a)

The Police submit that the personal information relates to the involved individuals' "medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation". It states that portions of the records "contain a record of the injuries sustained by all of the involved parties at the scene of the accident and at the time of the post mortem examinations, as well as a synopsis of the toxicology reports of all four deceased individuals."

Section 14(3)(b)

The Police also submit that the information contained in the records was compiled and is identifiable as part of an investigation into a possible violation of law. They indicate that the investigation was undertaken in order to determine “the sequence of events leading up to the collision, to establish the cause of the collision and what, if any, violations of law took place.” The Police state that:

In a motor vehicle collision involving personal injury or death, the police investigate to determine if there were possible *Highway Traffic Act* offences such as Careless Driving, Speeding, etc. and or *Criminal Code* offences such as Dangerous Driving Cause Death, Dangerous Driving Cause Bodily Harm, Criminal Negligence Cause Death, Impaired Operation, etc.

Findings

Based on my review of the records and the representations of the Police, I am satisfied that the Police compiled all of the information in the records as part of an investigation into a possible violation of law, under either the *Highway Traffic Act* or the *Criminal Code*. The Police concluded that, as the driver of the vehicle responsible for the accident was killed, no criminal charges could be laid. However, the fact that criminal proceedings were not commenced does not have a bearing on this issue, since section 14(3)(b) only requires that there be an investigation into a possible violation of law (Orders PO-1849 and MO-1715).

In addition, I find that the records also contain information which falls within the ambit of the presumption in section 14(3)(a) as it relates to the post mortem examinations of the bodies of the deceased individuals involved in the accident. With respect to the toxicology portions of the records, a number of previous orders have found that forensic test results involving blood alcohol analyses form part of the medical history and/or condition of a deceased person, and that the presumption in section 14(3)(a) applies to this information (Orders P-362, P-412, P-482, P-945 and P-1121). Having reviewed the representations of the Police and adopting the reasoning articulated in past orders, I find that the blood alcohol analysis test results are part of the medical history and/or condition of the involved individuals, and disclosure of this information would constitute a presumed unjustified invasion of their personal privacy under section 14(3)(a).

I find that the presumptions in sections 14(3)(a) and (b) apply to the personal information in the records. Accordingly, the disclosure of this information is presumed to constitute an unjustified invasion of the personal privacy of the individuals involved in the collision and the information is exempt from disclosure under the mandatory exemption in section 14(1).

PUBLIC INTEREST IN DISCLOSURE

During the mediation stage of the appeal, the appellant indicated his belief that there exists a public interest in the disclosure of the personal information contained in the records, particularly those relating to the toxicology results from the body of the deceased driver of the vehicle.

Section 16 of the *Act* provides:

An exemption from disclosure of a record under sections 7, 9, 10, 11, 13 and **14** does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption. [my emphasis]

For section 16 to apply, two requirements must be met. First, there must exist a compelling public interest in the disclosure of the records. Second, this interest must clearly outweigh the purpose of the exemption [Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)*, [1999] O.J. No. 488 (C.A.)].

In Order P-984, former Adjudicator Holly Big Canoe discussed the first requirement referred to above:

“Compelling” is defined as “rousing strong interest or attention” (Oxford). In my view, the public interest in disclosure of a record should be measured in terms of the relationship of the record to the *Act*’s central purpose of shedding light on the operations of government. In order to find that there is a compelling public interest in disclosure, the information contained in a record must serve the purpose of informing the citizenry about the activities of their government, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices.

If a compelling public interest is established, it must then be balanced against the purpose of any exemptions which have been found to apply. Section 16 recognizes that each of the exemptions listed, while serving to protect valid interests, must yield on occasion to the public interest in access to information which has been requested. An important consideration in this balancing exercise is the extent to which denying access to the information is consistent with the purpose of the exemption. [Order P-1398]

The circumstances surrounding the accident which is the subject of the records are very compelling and were of great interest not only in the community where it occurred but throughout Ontario. However, I am of the view that the disclosure of the information contained in the records would not serve the purpose of informing the public about the activities of the Police or government. The public interest in this case revolves around the need to know more about the tragic circumstances which led to the accident and the loss of four young lives. In my view, there is no public interest in disclosure that would serve the purposes envisioned by section 16. As a result, I find that this section has no application to the records under consideration here.

ORDER:

I uphold the decision of the Police to deny access to the records.

Original signed by: _____
Donald Hale
Adjudicator

December 3, 2003 _____