



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER MO-1912**

**Appeal MA-040262-1**

**Halton Regional Police Services Board**



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## **NATURE OF THE APPEAL:**

The Halton Regional 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 records relating to the death of the requester's common-law spouse.

The Police responded by denying access to the responsive records on the basis of the exemptions found in section 8(2)(a) (law enforcement) and section 14(1) (invasion of privacy) in conjunction with the factors in sections 14(2)(f) (highly sensitive) and 14(2)(i) (unfair damage to reputation), and the presumptions in sections 14(3)(a) (medical information), 14(3)(b) (investigation into a possible violation of law) and 14(3)(h) (racial or ethnic information) of the *Act*.

In the decision letter, the Police also referred to the criteria under section 54(a) of the *Act*, which 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;

The Police suggested to the requester that if she believed she met the criteria in that section, she should submit official court documentation in support of that position.

Finally, in a postscript to the decision, the Police referred to the following excerpt from this office's *1999 Annual Report* which addresses issues relating to requests for information about a deceased family member:

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*.

The requester (now the appellant) appealed the Police's decision.

During the mediation stage of the appeal, the possible application of section 38 (discretion to refuse requester's own information) of the *Act* was raised. The Police subsequently issued a revised decision letter which, in addition to the information contained in the first decision, also referred to the decision by the Police to deny access to the records under sections 38(a) and (b) of the *Act*.

Mediation did not resolve the issues, and the appeal was transferred to the inquiry stage of the process. I sent a Notice of Inquiry to the Police, initially, and received representations in response. I then sent the Notice of Inquiry, along with a copy of the Police's representations, to the appellant, who also provided representations.

## **RECORDS:**

The records at issue consist of a sudden death report and six follow-up reports.

## **DISCUSSION:**

### **PRELIMINARY ISSUE**

As a preliminary issue, the appellant identifies that she had provided this office with a notarized copy of the will of the deceased individual, appointing her as the executor of the deceased's estate. She also attached a second copy of the notarized will to her representations.

Section 54(a) deals with the exercise of a right or power of a deceased individual, and that section was referred to by the Police in their initial decision letter. The Police identified the requirements of that section, and asked the appellant to submit documentation confirming her view that the section applied. Although the application of this provision of the *Act* was not identified as an issue in the course of this appeal, the appellant has referred to it in her representations. I will therefore address this as a preliminary issue.

Previous orders have established that, under section 54(a), a requester can exercise the deceased's right of access under the *Act* if she can demonstrate that

- 1) she is the personal representative of the deceased, and
- 2) the right she wishes to exercise relates to the administration of the deceased's estate.

If a requester 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 [Orders M-927; MO-1315].

The term "personal representative" means an executor, an administrator, or an administrator with the will annexed with the power and authority to administer the deceased's estate [*Adams v. Ontario (Information and Privacy Commissioner)* (1996), 136 D.L.R. (4th) 12 at 17-20 (Ont. Div. Ct.)]. Generally, to establish that she is the deceased's personal representative, the requester should provide written evidence of her authority to deal with the estate of the deceased, including a certificate of appointment of estate trustee [Order MO-1449]. A will alone may not be sufficient [Order MO-1365].

From the material provided by the appellant in this appeal, it appears that she is the “personal representative” of the deceased.

With respect to the second requirement of section 54(a), the appellant must demonstrate that the request for information in this appeal “relates to the administration of the estate”. To meet this test, the appellant must demonstrate that she is seeking access to the records for the purpose of administering the estate [Order MO-1315; *Adams v. Ontario (Information and Privacy Commissioner)* (1996), 136 D.L.R. (4th) 12 at 17-20 (Ont. Div. Ct.)].

Requests have been found to “relate to the administration of the estate” where the records are:

- relevant to determining whether the estate should receive benefits under a life insurance policy [Order MO-1315]
- relevant to the deceased’s financial situation and allegations of fraud or theft of the deceased’s property [Order MO-1301]
- required in order to defend a claim against the estate [Order M-919]
- required to prepare an action on behalf of the estate for damages for injuries caused to the deceased person prior to death, where the damages would be recoverable by the estate, rather than the surviving family members [Order MO-1803]

Requests have been found *not* to “relate to the administration of the estate” where the records are:

- sought to support a civil action on behalf of a deceased’s estate for the wrongful death of that individual, as section 38(1) of the *Trustee Act* precludes recovery by the estate of damages for the death or loss of expectation of life by the deceased [Orders M-400, PO-1849]
- sought to support a civil claim by family members under the *Family Law Act*, where any damages would be paid to the family members and not to the estate [Order MO-1256]
- sought for personal reasons, for example, where the requester “wishes to bring some closure to . . . tragic events” [Order MO-1563]

The appellant states that she requires this information for a number of reasons. One of the reasons she refers to is that, as Estate Trustee for the deceased’s estate, she requires the information to “administer his estate and to confirm that there has been no wrong doing.” She also identifies a number of questions she has about the actions of the Police and others with

regard to the investigation of the incident and the subsequent actions taken, including the accuracy of the information and concerns about what information was given to others involved in the investigation and follow-up actions.

I have carefully reviewed the appellant's representations. In my view the information provided by the appellant is insufficient to support a finding that the request for records relates to the administration of the deceased's estate. Although she refers to the need to access the records to "administer the estate", other than general references to possible "wrong doing" and questions about Police processes, the appellant does not refer to any specific ways in which the request relates to the "administration of the estate", as that phrase has been interpreted by this office.

Accordingly, I find that section 54(a) does not apply in the circumstances of this appeal.

### **PERSONAL INFORMATION/INVASION OF PRIVACY**

In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains "personal information" and, if so, to whom it relates. That term is defined in section 2(1) as follows:

"personal information" means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except where they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,

- (g) the views or opinions of another individual about the individual, and
- (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

The Police state:

The recorded information that has been withheld from disclosure contains the personal information of a number of individuals, including that of the deceased, and family members. The record includes names, addresses, phone numbers and employment information of affected individuals, statements and the personal family history and medical information of the deceased ...

The Police also state that the records contain the personal information of the appellant.

Following my review of the records, I find that all of the records contain the personal information of the deceased individual including his marital or family status (paragraph (a)), medical history (paragraph (b)), address and telephone numbers (paragraph (c)) and his name along with other personal information relating to him (paragraph (h)).

I also find that four of the records (Records 1, 3, 4 and 7) contain the personal information of the appellant. These records contain information such as her marital or family status (paragraph (a)), address and telephone numbers (paragraph (c)), her personal views and opinions (paragraph (e)) and her name along with other personal information relating to her (paragraph (h)), including statements she made to the Police.

Finally, some portions of the records also contain the personal information of other identifiable individuals including their addresses and telephone numbers (paragraph (c)), their personal views and opinions (paragraph (e)) and their names along with other personal information relating to them (paragraph (h)), including a statement an identifiable individual made to the Police.

#### **DISCRETION TO REFUSE ACCESS TO APPELLANT'S OWN PERSONAL INFORMATION /LAW ENFORCEMENT**

Under section 38(a) of the *Act*, an institution has the discretion to deny an individual access to his or her own personal information in instances where the exemption in section 8 applies.

The Police rely on section 8(2)(a) in support of the section 38(a) exemption claim.

**Section 8(2)(a)**

Section 8(2)(a) states:

A head may refuse to disclose a record,

that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law;

In order for a record to qualify for exemption under section 8(2)(a) of the *Act*, the Police must satisfy each part of the following three-part test:

1. the record must be a report; and
2. the report must have been prepared in the course of law enforcement, inspections or investigations; and
3. the report must have been prepared by an agency which has the function of enforcing and regulating compliance with a law.

(See Order 200 and Order P-324)

In support of their position that the records qualify for exemption under section 8(2)(a), the Police refer to their statutory obligations under the *Police Services Act*. The Police then state:

The preparation of a police occurrence report assists officers that are assigned to follow up incidents and further investigate. Further, the report assists in preparing a case for the Crown in the event suspects are arrested and prosecuted. The author of the report (the investigating officer) was at this particular time of preparation, engaged in the conduct of an investigation into a death at the home of the deceased and therefore the record is considered to be a report prepared in the course of law enforcement.

Upon my review of the records at issue, I find that the first requirement of the test for exemption under section 8(2)(a) has not been established. The word “report” is not defined in the *Act*. However, previous orders have found that in order to qualify as a report, a record must consist of a formal statement or account of the results of the collation and consideration of information. Generally speaking, results would not include mere observations or recordings of fact (Order 200).

Many previous orders of this office have determined that occurrence reports do not constitute “reports” for the purposes of section 8(2)(a) (Orders M-1109, PO-1845 and PO-1959). I adopt the approach taken in those appeals with respect to the definition of the term “reports”. The

sudden death report and follow-up reports at issue in this appeal are recordings of the facts and observations of police officers in relation to the death of the appellant's spouse. They consist of recordings of facts, observations and statements from individuals taken in the course of the investigation. In my view, they cannot accurately be described as "reports" for the purposes of section 8(2)(a).

Accordingly, I find that the records do not qualify for exemption under section 8(2)(a) or section 38(a) of the *Act*.

### **DISCRETION TO REFUSE ACCESS TO APPELLANT'S OWN PERSONAL INFORMATION/INVASION OF PRIVACY**

Section 36(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 38 provides a number of exceptions to this general right of access, including section 38(b). Section 38(b) introduces a balancing principle that must be applied by institutions where a record contains the personal information of both the requester and another individual. In this case, the Police must look at the information and weigh the appellant's right of access to her own personal information against the affected person's right to the protection of their privacy. If the Police determine that release of the information would constitute an unjustified invasion of the affected person's personal privacy, then section 38(b) gives the Police the discretion to deny access to the appellant's personal information.

Under section 14, where a record contains personal information only of an individual other than the requester, the institution must refuse to disclose that information unless disclosure would not constitute an "unjustified invasion of privacy".

In determining whether the exemptions in sections 14(1) or 38(b) apply, sections 14(2), (3) and (4) of the *Act* provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the affected person's personal privacy. Section 14(2) provides some criteria for the Police to consider in making this determination; section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy; and section 14(4) refers to certain types of information whose disclosure 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 section 14(2) (*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767).

The Police take the position that disclosure of the information in the records is presumed to constitute an unjustified invasion of the privacy of the deceased under the presumptions in sections 14(3)(a), (b) and (h) 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;
- .....
- (h) indicates the individual's racial or ethnic origin, sexual orientation or religious or political beliefs or associations.

With respect to the presumption in section 14(3)(a), the Police state:

The information contained in the occurrence report contains the medical condition of the deceased at the time of death. Also documented is the cause of death. Further, the medical history of the deceased is contained within the body of the report.

The Police state as follows in support of their position that the records were compiled and are identifiable as part of an investigation into a possible violation of law for the purpose of section 14(3)(b):

The fact that this report was a sudden death means the Police were called to investigate possible foul play, thereby a possible violation of law.

... since the personal information relates to records compiled as part of an investigation into a possible violation of law, then the disclosure of this personal information is presumed to be an unjustified invasion of their privacy except to the extent that it is necessary to prosecute the violation.

... The record is therefore subject to this presumed unjustified invasion of personal privacy under section 14(3)(b).

The Police also state that the race of the deceased is documented in the records, and that those references contained in the records are subject to the presumption in section 14(3)(h).

### ***Findings***

I have carefully reviewed the records at issue in this appeal and find that they were compiled by the Police in the course of investigating the circumstances surrounding the death of the appellant's spouse. Some of the information in the records also refers to the medical condition of the deceased at the time of death and his medical history. This information falls within the presumption in section 14(3)(a). I find further that the personal information contained in all of

the records at issue in this appeal was compiled and is identifiable as part of the Police investigation into a possible violation of law under section 14(3)(b).

Accordingly, I find that the disclosure of that personal information is presumed to constitute an unjustified invasion of the personal privacy of the deceased individual under sections 14(3)(a) and (b) of the *Act*.

The appellant has identified in her representations a number of reasons why she is interested in obtaining the records at issue. The reasons identified by the appellant include her interest in ensuring that the recorded information is accurate and complete, to review the actions of the Police and others, and to confirm the accuracy of the information contained in the records which record statements she herself made to the Police. In addition, the appellant identifies in her representations a number of questions and concerns she has about the actions taken by the Police and others involved in reviewing the circumstances surrounding the death of her common-law spouse, and reviews some remedial actions which have been taken in this regard since his death.

Many of the issues raised by the appellant are listed or unlisted factors in section 14(2) which the appellant wishes to be taken into account in deciding whether the information contained in the records should be disclosed to her. However, as set out above, 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 section 14(2) (*John Doe v. Ontario*). Accordingly, although the appellant identifies a number of reasons why she is interested in obtaining the information in the records, the disclosure of the information is presumed to constitute an unjustified invasion of the personal privacy of the deceased.

I have earlier found that Records 2, 5 and 6 do not contain the personal information of the appellant. As the presumptions in section 14(3) apply to this information, and there is no suggestion that either section 14(4) or the “public interest override” in section 16 applies, Records 2, 5 and 6 are exempt from disclosure under section 14(1) of the *Act*.

Records 1, 3, 4 and 7 contain the personal information of the appellant as well as other identifiable individuals. I have found that the presumptions in sections 14(3)(a) and (b) apply to this information. I find that section 14(4) does not apply, and the appellant has not raised the application of the “public interest override” in section 16. Accordingly, subject to my treatment of the “absurd result” principle set out below, Records 1, 3, 4 and 7 are exempt from disclosure under section 38(b) of the *Act*.

The section 38(b) exemption is discretionary and permits the Police to disclose information, despite the fact that it could be withheld. On appeal, this office may review the Police’s decision in order to determine whether it exercised its discretion and, if so, to determine whether it erred in doing so (Orders PO-2129-F and MO-1629).

Upon review of all of the circumstances surrounding this appeal and the Police’s representations on the manner in which it exercised its discretion, and subject to the “absurd result” discussion

below, I am satisfied that the Police have not erred in the exercise of their discretion not to disclose the records under section 38(b).

### **ABSURD RESULT**

Where a requester originally supplied the information contained in a record, or the requester is otherwise aware of it, the information may be found not exempt under section 38(b), because to find otherwise would be absurd and inconsistent with the purpose of the exemption. In Order M-444, Senior Adjudicator John Higgins stated:

Turning to the presumption in section 14(3)(b), the evidence shows that the undisclosed information was compiled and is identifiable as part of an investigation into a possible violation of law (namely, a murder investigation) and for that reason, it might be expected that the presumption in section 14(3)(b) would apply.

However, it is an established principle of statutory interpretation that an absurd result, or one which contradicts the purposes of the statute in which it is found, is not a proper implementation of the legislature's intention. In this case, applying the presumption to deny access to information which the appellant provided to the Police in the first place is, in my view, a manifestly absurd result. Moreover, one of the primary purposes of the *Act* is to allow individuals to have access to records containing their own personal information, unless there is a compelling reason for non-disclosure. In my view, in the circumstances of this appeal, non-disclosure of this information would contradict this primary purpose.

It is possible that, in some cases, the circumstances would dictate that this presumption should apply to information which was supplied by the requester to a government organization. However, in my view, this is not such a case. Accordingly, for the reasons enumerated above, I find that the presumption in section 14(3)(b) does not apply. In the absence of any factors favouring non-disclosure, I find that the exemption in section 38(b) does not apply to the information at issue in the records.

Several subsequent orders have supported this position and include similar findings (see, for example, Orders M-613, M-847, M-1077 and P-1263). All of these orders have found that non-disclosure of personal information which was originally provided to an institution by a requester, or personal information of other individuals which would clearly have been known to a requester, would contradict one of the primary purposes of the *Act*, which is to allow individuals to have access to records containing their own personal information unless there is a compelling reason for non-disclosure. These orders determined that applying the presumption to deny access to the information which an appellant provided to the institution would, according to the rules of statutory interpretation, lead to an "absurd" result.

In my view, the reasoning in these past orders is applicable to some of the information at issue in this appeal. As identified above, four of the records contain the personal information of the appellant as well as the personal information of other individuals. Portions of two of those records (Records 1 and 7) contain statements made by the appellant to the officers investigating the incident, or contain information of which the appellant is clearly aware. I find that applying the section 38(b) exemption to deny access to information that was either provided to the Police by the appellant in the first place, or information of which she was clearly aware, would lead to an "absurd" result.

Therefore, I find that section 38(b) does not apply to the portions of Records 1 and 7 containing statements made by the appellant to the officers investigating the incident, or containing information of which the appellant is clearly aware, and the relevant portions of those records should be disclosed to the appellant.

I am enclosing, with the copy of this order being sent to the Police, a copy of Records 1 and 7 highlighting those portions that the Police should disclose to the appellant.

**ORDER:**

1. I uphold the decision of the Police to deny access to Records 2, 3, 4, 5 and 6, and the non-highlighted portions of Records 1 and 7. I have attached a copy of Records 1 and 7 to the order provided to the Police, with the portions that should be disclosed highlighted.

2. I order the Police to disclose the highlighted portions of Records 1 and 7 to the appellant by May 4, 2005, but not before April 29, 2005.

3. In order to verify compliance with the terms of this order, I reserve the right to require the Police to provide me with a copy of the records disclosed to the appellant pursuant to Provision 2.

Original Signed By: \_\_\_\_\_  
Frank DeVries  
Adjudicator

\_\_\_\_\_ March 30, 2005