



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-1943

Appeal MA-040340-1

Guelph Police Service



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NATURE OF THE APPEAL:

The Guelph Police Service (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), for access to the fingerprints of the requester's deceased husband. The Police located and denied access to the records under sections 8(1)(a),(b) and (c) and section 14 of the *Act*.

The requester, now the appellant, appealed the Police's decision.

During mediation of the appeal, the Police shared information with the appellant on the circumstances under which the fingerprints were obtained. The Police confirmed that the fingerprints were obtained in 1989, during the course of a Police investigation.

Further mediation was not possible and the appeal was moved to the adjudication stage, in which the adjudicator conducts an inquiry under the *Act*. I began my inquiry by sending a Notice of Inquiry setting out the facts and issues on appeal to the Police. The Police responded with representations. I then sent a Notice of Inquiry to the appellant, enclosing a copy of the Police's severed representations. The appellant also provided representations.

In the representations provided by the Police, they indicate that they no longer rely on the exemptions found in sections 8(1)(a), (b) and (c), and I will therefore not consider these exemptions in this order.

RECORDS:

The records at issue and the exemptions claimed for them are a one page record (fingerprints). A duplicate of this page is also identified as responsive. As it does not differ in any way, I will not address the duplicate in this order.

DISCUSSION:

PERSONAL INFORMATION

Under the *Act*, different sections may apply depending on whether a record at issue contains or does not contain the personal information of the requester, in this case, the appellant [see Order M-352]. Requests for records that contain only the personal information of individuals other than the requester fall under Part I of the *Act* (which applies to requests for general records). Part I contains provisions which provide a right of access, an access procedure, and a series of exemptions which may apply to this type of request. Part II of the *Act* contains similar provisions that apply to records containing one's own personal information.

In order to decide this appeal, I must therefore begin by determining whether the records contain personal information and, if so to whom it relates.

Under section 2(1) of the *Act*, personal information is defined, in part, to mean recorded information about an identifiable individual. Under paragraph (d) of the definition, "personal information" includes the fingerprints of the individual.

The Police submit:

The personal information on the fingerprint sheet contains [the appellant's husband's] charges, fingerprints, [date of birth], signature, nationality, race, height, weight[,] place of birth, and FPS No. (which is confidential information that the RCMP do not wish police services [to] release).

I agree with the Police that the record contains the personal information of the appellant's deceased husband. In addition, I have decided that the record does not contain any of the appellant's own personal information.

Section 2(2) of the *Act* sets out a time frame after an individual's death when information about the deceased could still be considered that individual's "personal information". It states that "[p]ersonal information does not include information about an individual who has been dead for more than thirty years". In this appeal, however, because the appellant's husband has not been dead for more than thirty years, the record is still his personal information under the *Act*.

PERSONAL PRIVACY

In this case, I have found that the record contains the appellant's husband's personal information, but does not contain any personal information of the appellant. In those circumstances, Part I of the *Act* applies and I must consider whether the record is exempt under section 14(1). This section *prohibits* the Police from releasing this information unless one of the exceptions in paragraphs (a) through (f) applies. The only exception that might apply here is section 14(1)(f) which provides that "[a] head shall refuse to disclose personal information to any person other than the individual to whom the information relates except..." where releasing that information would not be an unjustified invasion of the other individual's personal privacy.

Because of the wording of section 14(1)(f), the Police *must* refuse to disclose the records unless they determine that disclosure is not an unjustified invasion of privacy, as described above. Sections 14(2), (3) and (4) of the *Act* provide guidance in this regard.

Among other provisions, the Police rely on section 14(3)(b), which states:

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...

In their representations, the Police state:

... Section 14(3)(b) applies to the collection of fingerprints as part of the law enforcement investigation and is supported by the Identification of Criminals Act. The identification of an accused is part of the law enforcement investigation process. Should the accused provide false identity, the fingerprints taken may either provide the correct identification in comparing them with prints from prior encounters which will reveal the identity of that accused at a latter time.

Based on confidential evidence provided by the Police, I am satisfied that the fingerprints were “compiled and identified” as part of an investigation of a possible violation of law. Therefore, the presumed unjustified invasion of privacy in section 14(3)(b) applies to the record.

Once a presumption applies, as it does in this appeal, the Divisional Court has stated that an established presumption cannot be rebutted by any one or combination of factors in 14(2) (*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767). The Court went on to state that a presumption (such as section 14(3)(b)) can only be overcome if section 14(4) or section 16 applies, which is not the case in this appeal.

The appellant’s representations are an emotional plea for the fingerprints of her deceased husband. She does not comment directly on any of the issues raised in the Notice of Inquiry that I sent to her, or the representations of the Police. The appellant asks me to “[p]lease consider how [she] is feeling about this.” If there were no presumed unjustified invasion of privacy under section 14(3), I might be able to consider the appellant’s situation as a relevant circumstance favouring disclosure under section 14(2), but since the section 14(3)(b) presumption *does* apply, I am not able to do so.

While I am sensitive to the representations of the appellant, my decision is based on the *Act* and the evidence provided to me, as required by law.

I find that the record is exempt under section 14(1) of the *Act*.

ORDER:

I uphold the Police’s decision to deny access to the records.

Beverley Caddigan
Adjudicator

July 19 2005