Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER MO-2005

Appeal MA-050167-1

Toronto Police Services Board

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NATURE OF THE APPEAL:

The Toronto Police Services Board (the Police) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) from the son of a man who died suddenly for access to "an official copy of a police report" concerning the death of his father.

The Police identified a 10-page document as the responsive record, which they refer to as an "occurrence report" and as a "sudden death report", and granted partial access to it. The Police refused to disclose portions of each page of the report based on one or both of the following two exemptions: (1) the discretionary exemption in section 38(a) (protection of personal privacy) in conjunction with section 8(2)(a) (law enforcement), and (2) the discretionary exemption in section 38(b) (protection of personal privacy), taking into account the factor at 14(2)(f), and applying the presumptions at 14(3)(a) and (b) of the *Act*.

The Police claim that in addition to containing the personal information of the requester, the occurrence report contains the personal information of the deceased and the personal information of his wife (the affected person), who is the requester's mother, and that disclosure would be an unjustified invasion of the personal privacy of those individuals.

The requester, now the appellant, appealed the decision to withhold this information. In his letter appealing the decision, the appellant also stated that information provided by the Police about certain property of his father was inaccurate and indicated that this inaccuracy was adversely affecting his ability as executor to administer his father's estate.

This office assigned a mediator to assist the parties to resolve the issues. During the course of mediation, the appellant advised the mediator that he was seeking access to a copy of a videotape of an interview he gave to the Police. In response, the Police located the videotape and provided the appellant with full access to it.

The appellant was also of the view that a criminal investigation report should exist. The Police advised that the only record responsive to the request was the ten-page occurrence report to which partial access had been granted. The appellant advised the mediator that he would like to pursue access to all the severed portions of the occurrence report.

The appellant also advised the mediator that the information he is seeking does not relate to the administration of the estate of his father, and accordingly, the application of section 54(a) of the *Act* is not at issue in this appeal in relation to the refusal of the Police to disclose this information.

On receipt of a draft mediator's report setting out the issues remaining in dispute, the appellant advised the mediator that certain information in certain records describing certain property of the father is inaccurate, and that requiring correction of this information should be an issue in this appeal. As indicated above, the appellant had raised this issue in his letter appealing the decision to withhold the information in the record at issue. The mediator advised the appellant that the accuracy of this information was not within the scope of his request to the Police and therefore cannot be determined in this appeal.

As mediation did not resolve the issues, this appeal entered the inquiry stage and I was assigned to adjudicate it. I initially sent Notices of Inquiry setting out the facts and issues in this appeal to the Police and the affected person. The affected person responded, and consented to the disclosure of her personal information to the appellant. The affected person's representations also raised the issue of the accuracy of certain information about the father's property, found in a letter from the Police, in property receipts, and in the occurrence report previously raised by the appellant. She alleged that this information is inaccurate and asked that it be corrected.

The Police also provided representations, a copy of the non-confidential portion of which was provided to the appellant, along with a Notice of Inquiry and an invitation to provide representations. The appellant provided representations, which included a claim that I should order the Police to correct the information about the father's property.

Because both the appellant and his mother raised the issue of whether the Police should be required to correct the information about the father's property and other information in the record at issue, despite the mediator's advice that this was outside the scope of the appeal, I decided to address the question of whether the scope of the appeal before me includes this issue. I therefore wrote to the Police, enclosing a Notice of Inquiry setting out this issue together with the complete representations of the appellant and the affected party, and asked them to reply to the representations of these individuals about this issue. I received representations from the Police in reply.

DISCUSSION:

SCOPE OF THE REQUEST

Is correction of personal information within the scope of the request?

Section 17 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

> (1) A person seeking access to a record shall,
>
> (a) make a request in writing to the institution that the person believes has custody or control of the record;
>
> (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record; and
>
> . . . . .
>
> (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer

> assistance in reformulating the request so as to comply with subsection (1).

Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose of spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour [Orders P-134, P-880].

Section 36(1) gives an individual a general right of access to his or her own personal information held by an institution. Section 36(2) gives the individual a right to ask the institution to correct the personal information. If the institution denies the correction request, the individual may require the institution to attach a statement of disagreement to the information. Sections 36(2)(a) and (b) read:

> Every individual who is given access under subsection (1) to personal information is entitled to,
>
> (a) request correction of the personal information where the individual believes there is an error or omission therein;
>
> (b) require that a statement of disagreement be attached to the information reflecting any correction that was requested but not made;

Section 39(1)(c) of the *Act* provides the following right of appeal in connection with a request to correct personal information:

> A person may appeal any decision of a head under this Act to the Commissioner if,
>
> (c) the person has made a request for correction of personal information under subsection 36 (2);

As provided by section 39(1)(c), an appellant must first ask the institution to correct the information before this office will consider whether the correction should be made.

Analysis and findings

For the purposes of this discussion, it is important to clarify that this appeal arises from two access requests by the appellant under the *Act*. The first was dated April 13, 2005. It requested an "official copy of a police report concerning the death of [his father]". The second request was dated April 14, 2005 and asked for an "official copy of a police criminal investigation report concerning the death of [his father]". This request also included a request that the Police take other actions.

Neither of these requests asked to Police to correct information about the father's property.

The Police sent the appellant a letter on April 18, 2005, stating that as the requests were very similar, they were being processed together.

On April 20, 2005, the Police responded to the two requests by letter, stating that in a telephone conversation the appellant "clarified that [his] request was for access to the police occurrence report". The decision of the Police in that letter was to disclose parts of the report but to withhold some information.

On May 2, 2005, the appellant sent a letter to this office appealing the decision to refuse access to parts of the occurrence report. In that letter, he also raised other issues, including the alleged inaccuracy of property receipts that he had received from the Police, which do not appear to be documents referred to in the requests or Police decision, and alleged inaccuracies in the record disclosed to him. Although he did not explicitly ask this office to require correction of this information, it became apparent through his comments at the end of mediation that he intended his appeal to encompass such a request.

In his representations, the appellant states that he received the allegedly inaccurate property receipt on April 13, the day of his first request under the *Act* and the day before his second request under the *Act*. However, he made no reference to inaccuracy or correction in either of these requests. He states that he sent a letter to the Police on April 14, objecting to inaccuracies in the property receipt. He says that this was a six-page fax, but he provided me with a two-page letter containing no indication on its face and no cover sheet indicating that it was sent by fax. Although the appellant used a standard "Access/Correction" form under the *Act* to submit his two access requests, the letter he provided to me is not addressed to the Freedom of Information and Protection of Privacy Unit of the Police and there is no indication on its face that it is intended as a request made under the *Act*.

Although the appellant states in his representations that "in accordance with section 36(2) of the Act I am requesting in writing that the institution (Police) correct any errors and omissions in [two identified] property receipts", there is insufficient evidence to satisfy me that the appellant ever made a similar request under the *Act* for correction of this information. If he did, it was separate from the requests and decision that are the subject of this appeal.

Nor is there any evidence before me that the affected person ever made a correction request to the Police under the *Act*.

Accordingly, I find that correction of information in property receipts is not within the scope of this appeal. I make this finding without prejudice to any rights the appellant may have to make such a request to the Police under the *Act* and to appeal from a refusal or deemed refusal to make any requested correction.

The appellant also alleged in his appeal letter that there are inaccuracies in the record disclosed to him in response to his request, including inaccuracies in information about his father's property and about the appellant himself. However, there is no evidence that he made a request to the Police in writing under the *Act* for correction before raising this in his appeal letter. As a correction request to the Police is a prerequisite to an appeal to this office, I find that correction of this information is also not within the scope of this appeal. This finding is also made without prejudice to any rights the appellant may have to make a correction request to the Police under the *Act* and to appeal a refusal or deemed refusal.

I wish to note as well that although I have accepted that the application of section 54(a) to any rights of access to information in the record that is the subject of this appeal is not in issue in this appeal, the question of whether section 54(a) may apply to any right to request correction of records is not before me, and I make no finding on this issue.

PERSONAL INFORMATION

Does the record contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

General principles

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 list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information [Order 11].

The meaning of "about" the individual

To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual [Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F, PO-2225].

Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual [Orders P-1409, R-980015, PO-2225].

The meaning of "identifiable"

To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed [Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.)].

Analysis and findings

The record contains information about the appellant, including his age, date of birth, gender, home address and telephone number, marital status, place of birth, citizenship and driver's licence number.

It also contains information about the appellant's mother, including her age, date of birth, gender, marital status, birthplace, and home address and telephone number. As noted, the affected person has consented to the disclosure of this information to the appellant.

In addition, the record contains information about the appellant's deceased father, including his age, date of birth, gender, home address and telephone number, medical history, and cause of death. Section 2(2) provides that "[p]ersonal information does not include information about an individual who has been dead for more than thirty years." As the deceased father died less than thirty years ago, section 2(2) does not apply.

All of this information is "about" the individuals in their personal capacity rather than any professional, official or business capacity. I find therefore that the record contains the personal information of the appellant, his mother, and his father.

In addition, I find that some parts of the record do not constitute the personal information of any individual.

RIGHT OF ACCESS TO ONE'S OWN PERSONAL INFORMATION/LAW ENFORCEMENT

Does the discretionary exemption at section 38(a) in conjunction with the section 8(2)(a) exemption apply to the information at issue?

Introduction

Section 36(1) gives individuals a general right of access to their own personal information held by an institution. Section 38 provides a number of exemptions from this right.

Under section 38(a), an institution has the discretion to deny an individual access to their own personal information where the exemptions in sections 6, 7, **8**, 8.1, 8.2, 9, 10, 11, 12, 13 or 15 would apply to the disclosure of that information.

In this case, the institution relies on section 38(a) in conjunction with section 8(2)(a).

Section 8(2) states, in part:

> A head may refuse to disclose a record,
>
> (a) 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;

The term "law enforcement" is used in several parts of section 8, and is defined in section 2(1) as follows:

> "law enforcement" means,
>
> (a) policing,
>
> (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and
>
> (c) the conduct of proceedings referred to in clause (b)

The term "law enforcement" has been found to apply in the following circumstances:

- a municipality's investigation into a possible violation of a municipal by-law [Orders M-16, MO-1245]
- a police investigation into a possible violation of the *Criminal Code* [Orders M-202, PO-2085]
- a children's aid society investigation under the *Child and Family Services Act* [Order MO-1416]
- Fire Marshal fire code inspections under the *Fire Protection and Prevention Act, 1997* [Order MO-1337-I]

The term "law enforcement" has been found *not* to apply in the following circumstances:

- an internal investigation to ensure the proper administration of an institution-operated facility [Order P-352, upheld on judicial review in *Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)* (1993), 102 D.L.R. (4th) 602, reversed on other grounds (1994), 107 D.L.R. (4th) 454 (C.A.)]
- a Coroner's investigation under the *Coroner's Act* [Order P-1117]
- a Fire Marshal's investigation into the cause of a fire under the *Fire Protection and Prevention Act, 1997* [Order PO-1833]

Generally, the law enforcement exemption must be approached in a sensitive manner, recognizing the difficulty of predicting future events in a law enforcement context [*Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.)].

It is not sufficient for an institution to take the position that the harms under section 8 are self-evident from the record or that a continuing law enforcement matter constitutes a *per se* fulfillment of the requirements of the exemption [Order PO-2040; *Ontario (Attorney General) v. Fineberg*].

Section 8(2)(a): law enforcement report

The word "report" means "a formal statement or account of the results of the collation and consideration of information". Generally, results would not include mere observations or recordings of fact [Orders P-200, MO-1238, MO-1337-I].

The title of a document is not determinative of whether it is a report, although it may be relevant to the issue [Order MO-1337-I].

Representations, analysis and findings

The Police state:

> The records were prepared in [the] course of the investigation of a sudden death. It is incumbent upon law enforcement personnel in the instance of any sudden death to thoroughly examine the circumstances in order to assist in determining whether that death was a result of natural causes, accident, homicide or suicide.

The appellant does not dispute that the Police are an agency that has the function of enforcing and regulating compliance with laws and that the record in question was prepared by them in the course of an "investigation", and I find that this is the case.

However, the record must also be a "report" to qualify for exemption under section 8(2)(a).

The Police state that the record is a report because:

> As the title of the form implies, a "Sudden Death Report" is the summarization of the entirety of the incident, listing the identity of the deceased and his personal information, the attending coroner, the disposal of the body and recapitulating the most sapient (sic) points of the occurrence.

As indicated above, previous orders have held that in the context of section 8(2)(a), "report" means "a formal statement or account of the results of the collation and consideration of information". Generally, results would not include mere observations or recordings of fact. I agree with this interpretation of "report".

The Police state that the record in question is a "Sudden Death Report", although they have also described it as an "occurrence report". I note that the first two lines suggest that this is a type of "occurrence report", or at least is similar to occurrence reports. I note that in the appeal that

resulted in Order MO-1912, the Halton Regional Police Services Board referred in its submissions to a sudden death report as an "occurrence report". In that order, Adjudicator Frank DeVries found that a sudden death report and follow-up reports were not "reports" for the purposes of section 8(2)(a) for the same reason that previous orders of this office determined that occurrence reports are generally not "reports" under section 8(2)(a), namely, because they are primarily recordings of facts and observations.

Adjudicator DeVries stated:

> 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).

This also describes the sudden death report in this case. Accordingly, I find that it is not a "report" for the purposes of section 8(2)(a) and is not exempt under this section.

I will therefore consider whether the portions withheld by the Police are exempt under section 38(b).

RIGHT OF ACCESS TO ONE'S OWN PERSONAL INFORMATION/PERSONAL PRIVACY OF ANOTHER INDIVIDUAL

Does the discretionary exemption at section 38(b) apply to the information at issue?

General principles

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 exemptions from this right.

Under section 38(b), where a record contains personal information of both the requester and another individual, and disclosure of the information would constitute an "unjustified invasion" of the other individual's personal privacy, the institution may refuse to disclose that information to the requester.

If the information falls within the scope of section 38(b), that does not end the matter. Despite this finding, the institution may exercise its discretion to disclose the information to the requester. This involves a weighing of the requester's right of access to his or her own personal information against the other individual's right to protection of their privacy.

Sections 14(1) to (4) provide guidance in determining whether the unjustified invasion of personal privacy threshold under section 38(b) is met.

Do any of the exceptions in paragraphs (a) to (e) of section 14(1) apply?

If the information fits within any of paragraphs (a) to (e) of section 14(1), disclosure is not an unjustified invasion of personal privacy and the information is not exempt from disclosure under section 38(b).

14(1)(a): consent

For section 14(1)(a) to apply, the consenting party must provide a written consent to the disclosure of his or her personal information in the context of an access request [see Order PO-1723].

Although the Police invoked this exemption to protect the privacy of the affected person (the appellant's mother), they did not ask her whether she wanted this information to be kept from her son.

I asked, and she consented to disclosure of her personal information. I find therefore that section 14(1)(a) applies to the affected person's personal information in the record and its disclosure to the appellant is therefore not an unjustified invasion of privacy. Accordingly, it is not exempt under section 38(b) and should be disclosed. This information is highlighted in blue on a copy of the record provided to the Police with this order.

None of paragraphs (a) to (e) of section 14(1) apply to the personal information of the appellant or his father. Therefore, I will consider whether its disclosure would constitute an unjustified invasion of personal privacy under section 38(b).

Would disclosure not be "an unjustified invasion of privacy" under section 38(b)?

The factors and presumptions in sections 14(2), (3) and (4) help in determining whether disclosure would or would not be an unjustified invasion of privacy under section 38(b).

Do any of the presumptions in paragraphs (a) to (h) of section 14(3) apply?

If any of paragraphs (a) to (h) of section 14(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 38(b). Once established, a presumed unjustified invasion of personal privacy under section 14(3) can only be overcome if section 14(4) or the "public interest override" at section 16 applies. [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767].

The Police claim that sections 14(3)(a) (medical history) and (b) (investigation into possible violation of law) apply. I will consider both of these presumptions.

14(3)(a): medical history

I agree with the Police that the record contains personal information that relates to the medical and psychological history of the appellant's father as well as his medical diagnosis and condition.

14(3)(b): investigation into possible violation of law

Even if no criminal proceedings were commenced against any individuals, section 14(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of law [Order P-242].

Section 14(3)(b) does not apply if the records were created after the completion of an investigation into a possible violation of law [Orders M-734, M-841, M-1086]

The representations of the Police on this issue are confusing and I did not find them of any assistance. However, in several previous orders this office has held that the personal information in sudden death reports prepared by police services is information compiled and is identifiable as part of an investigation into a possible violation of law [Orders MO-1256, MO-1449, PO-2080, and MO-1646].

Applying the reasoning in those orders, I find that the personal information in the record was compiled and is identifiable as part of an investigation into a possible violation of law.

Because the record contains the medical history of the appellant's father and because the personal information in the record was compiled and is identifiable as part of an investigation into a possible violation of law, its disclosure would constitute an unjustified invasion of personal privacy and it is exempt under section 38(b) for that reason, unless sections 14(4) or 16 apply, or unless exempting it would be lead to an absurd result.

Is disclosure not "an unjustified invasion of privacy" under section 14(4) or because the "public interest override" in section 16 applies?

If paragraph (a) or (b) of section 14(4) applies, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 38(b).

Sections 14(4)(a) and (b) apply to certain information relating to officers, employees, and contractors of institutions. They are not relevant to this situation.

Section 16 provides that the section 14 exemption does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption. The appellant does not allege that there is a public interest in disclosure that clearly outweighs the purpose of the exemption. I agree with the Police that the appellant's interest in disclosure is a personal rather than a public interest. For this reason, I find that section 16 does not apply.

As the section 14(3)(a) and (b) presumptions apply, and are not overridden by section 14(4) or section 16, I find that the information, other than the mother's personal information, is exempt unless this would lead to an absurd result. I will now consider whether exemption of any of the personal information in the record would be absurd.

Absurd result

Where the requester originally supplied the information, 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 [Orders M-444, MO-1323].

The absurd result principle has been applied where, for example:

- the requester sought access to his or her own witness statement [Orders M-444, M-451]

- the requester was present when the information was provided to the institution [Orders M-444, P-1414]

- the information is clearly within the requester's knowledge [Orders MO-1196, PO-1679, MO-1755]

If disclosure is inconsistent with the purpose of the exemption, the absurd result principle may not apply, even if the information was supplied by the requester or is within the requester's knowledge [Orders M-757, MO-1323, MO-1378].

Representations, analysis and findings

Some of the information in the record was provided to the Police by the appellant. However, the Police argue that information which their officers identify in the record as having been provided by the appellant may have been paraphrased by those officers, and therefore, cannot be found to have been provided by the appellant:

> The appellant requested, and was provided with, a copy of the videotaped interview conducted between himself and the Toronto Police Service.
>
> Exact conversations held by police officers with the appellant (such as the videotaped interview) were disseminated to him. Withholding a paraphrased conversation cannot rationally be seen to be an absurd result as it represents a form of recapitulation which reflects not only what a person has said but the perceptions of the listener. When a conversation is paraphrased, the listener has summarized only portions of it and/or has selected only particular aspects of that

> conversation and/or has perceived it through the prism of their own concepts and concerns.

I am not persuaded that the fact that the information provided by the appellant may have only been partially recorded, in a manner that may reflect the "concerns" of the person making the recording, provides a sufficient basis for not applying the "absurd result" principle unless it demonstrates in some manner that disclosure would be inconsistent with the purpose of the exemption. I am not satisfied that this is demonstrated here. If the Police wanted to withhold any possible inferences about their "concerns" on the basis of law enforcement matters protected under the *Act*, they could done so by claiming an exemption under section 8 (other than section 8(2)(a), which I have found does not apply).

There is nothing to indicate that the information in question was not provided by the appellant, and in fact the record affirms that it was. I therefore find that that the personal information which I have highlighted in yellow on a copy of the record provided to the Police with this Order was either provided by the appellant or is already known to him. I find that disclosure of this personal information would not be inconsistent with the purpose of the exemption; rather, it would be absurd to deny access to this information. Accordingly, I find that the highlighted information is not exempt under section 38(b).

Information that is not "personal" information

Although the record contains the personal information of the appellant, his mother, and his deceased father, some of the information that the Police have refused to disclose under section 38(b) is not personal information and therefore is not subject to this exemption for that reason. I have highlighted in green on the copy of the record provided to the Police the information that is not personal information.

EXERCISE OF DISCRETION

Did the institution exercise its discretion under section 38(b)? If so, should this office uphold the exercise of discretion?

General principles

The section 38(b) exemption is discretionary, and permits an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

In addition, the Commissioner may find that the institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose

- it takes into account irrelevant considerations
- it fails to take into account relevant considerations

In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations [Order MO-1573]. This office may not, however, substitute its own discretion for that of the institution [section 43(2)].

In support of their exercise of discretion, the Police cite passages from two previous orders of this office, Orders M-206 and M-96. I have tried unsuccessfully to understand the relevance of these passages to the question of whether the Police exercised their discretion appropriately in this case.

In support of their exercise of discretion, the Police also state:

> It is not possible to release further information to the appellant without violating the privacy of the deceased. It is reasonable in the circumstances, and mandatory in accordance with the Act, to refuse disclosure of the appellant's personal information if disclosure would constitute an unjustified invasion of another individual's (the deceased person's) personal privacy.

It is clear that the Police have based their exercise of discretion, at least in part, on a misunderstanding of their duty under the *Act*. The Police appear, from the discussion on page 6 of their initial representations, to believe that they have discretion to disclose only when a requester "stands in the shoes of" a deceased individual under section 54(a). This is incorrect.

When the personal information of both the requester and other individuals are found in a record, section 38(b) is the relevant section to consider in relation to personal privacy, rather than the mandatory exemption in section 14. As stated in the Notice of Inquiry provided to the Police, when the section 38(a) or (b) exemption applies to personal information, the decision whether to disclose it is discretionary, not mandatory.

Despite this error in their exercise of discretion, in view of the other determinations I have made in this order and the information I am ordering disclosed, I am satisfied that asking the Police to re-exercise their discretion in this case would serve no useful purpose.

ORDER:

1. I order the Police to disclose the highlighted portions of the record to the appellant by sending him a copy by **January 19, 2006**.

2. I uphold the decision of the Police not to disclose the remaining portions of the record that they have previously withheld.

3. To verify compliance with this order, I reserve the right to require the Police to provide to this office a copy of the record disclosed to the appellant.

Original signed by: December 12, 2005
John Swaigen
Adjudicator