



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER MO-2205**

## **Appeal MA06-415**

### **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), for:

...records relating to the death of a named individual (reportedly of suicide on [specified date]).

The Police located one responsive record, a five-page Occurrence Report, and denied access to it, in its entirety. In its decision, the Police noted that since the requester is not a blood relative or personal representative of the deceased, sections 11(2) and 54(a), which grant such individuals a potentially higher right of access to the personal information of others, do not apply in the circumstances. Accordingly, the Police's decision was to deny access to the information requested pursuant to section 14(1) (invasion of privacy), with specific reference to the presumption in section 14(3)(b) (investigation into a possible violation of law) of the *Act*.

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

During mediation, the appellant confirmed that he is not a relative of the deceased, nor a personal representative of the deceased. However, the appellant advised the mediator that he wishes to pursue access to the record at issue because he does not believe that all of the information in the record should be considered "personal information" and, therefore, subject to section 14(1). In this regard, the appellant wishes to raise the "severability of records" as an issue in dispute, pursuant to section 4(2) of the *Act*.

In discussions with the mediator, the appellant indicated that he believes the record may reveal a grave health or safety hazard to the public, and therefore wishes to raise the mandatory "obligation to disclose" as an issue in dispute, pursuant to section 5(1) of the *Act*.

The appellant also raised the application of section 14(2)(b) as a relevant factor favouring disclosure in this appeal, as he believes that access to the information may promote public health and safety. He also claims the application of section 14(1)(b) (exception on the basis of compelling circumstances affecting the health or safety of an individual) and section 16 of the *Act* (compelling public interest). Accordingly, these issues were added to those in dispute.

As no other mediation was possible, the file was transferred to me to conduct an Inquiry. I sent a Notice of Inquiry to the Police setting out the facts and issues in this appeal, seeking their representations, initially. I did not invite the Police to provide representations on section 5(1), as this office does not have the necessary jurisdiction to review an institution's decision not to apply this section. I received the Police's representations, but did not share the Police's representations with the appellant owing to confidentiality concerns. I then sent a Notice of Inquiry to the appellant, seeking his representations. I received representations from the appellant, as well.

## **RECORD:**

The record at issue consists of a five-page Occurrence Report.

## **DISCUSSION:**

### **PRELIMINARY ISSUE - OBLIGATION TO DISCLOSE**

The appellant has asked me to address the issue of the application of section 5(1) of the *Act* to compel disclosure of the record. This section reads:

Despite any other provision of this *Act*, a head shall, as soon as practicable, disclose any record to the public or persons affected if the head has reasonable and probable grounds to believe that it is in the public interest to do so and that the record reveals a grave environmental, health or safety hazard to the public.

Section 5(1) is a mandatory provision which requires the head to disclose records in certain circumstances. Former Commissioner Sidney B. Linden in Order 65 found that the duties and responsibilities set out in section 11 of the provincial *Act* (section 5 of the municipal *Act*) belong to the head alone. I concur with former Commissioner Linden's interpretation and adopt it in this appeal. As a result, it is my view that I do not have the power to make an order pursuant to section 5(1) of the *Act*.

### **PERSONAL INFORMATION**

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].

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].

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.)].

The appellant concurs with the Police that the record contains the personal information of the deceased. I agree with the appellant that the record contains the deceased's personal information. I also find that the record contains the personal information of other identifiable individuals, but not that of the appellant. The personal information in the record includes the deceased's and the other identifiable individuals' names along with other personal information about them (paragraph (h) of the definition of that term in section 2(1)), the views of one individual about another (paragraph (g)), their addresses and telephone numbers (paragraph (d)), their sex and ages (paragraph (a)), medical history (paragraph (b)) and information relating to their family status.

## PERSONAL PRIVACY

Where a requester seeks personal information of another individual, section 14(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 14(1) applies.

If the information fits within any of paragraphs (a) to (f) of section 14(1), it is not exempt from disclosure under section 14. The appellant has raised the exception in section 14(1)(b). This section reads:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

in compelling circumstances affecting the health or safety of an individual, if upon disclosure notification thereof is mailed to the last known address of the individual to whom the information relates;

The appellant appears to have raised this exception on the basis of his concern for his own safety and the safety of other unnamed individuals. He submits that he requires the record in order to ensure that the Police conducted a proper investigation into the deceased's death and to ensure that he and others are not at risk from the same individuals whom he claims were instrumental in the deceased's death.

In Order MO-1664, Adjudicator Donald Hale found that:

section 14(1)(b) speaks to compelling circumstances where the health or safety of an individual is at risk unless that individual is notified of the existence of certain information.

In this appeal, taking into account the contents of the record, I do not find that release of the record would have an affect on the health or safety of the appellant or other individuals. Furthermore, it would appear that the appellant is seeking the personal information of the deceased in order to conduct his own criminal investigation. In my view, this is not the type of "compelling circumstances" addressed by section 14(1)(b). As the appellant has failed to establish a reasonable link between disclosure of the information in the record and any threat to his or others health or safety, section 14(1)(b) does not apply to permit disclosure of the record.

I must now determine whether disclosure of the record would not be "an unjustified invasion of personal privacy" under section 14(1)(f). The section 14(1)(f) exception is more complex, and requires a consideration of additional parts of section 14.

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 personal privacy under section 14(1)(f).

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 14. 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 have raised the presumption in section 14(3)(b). This section reads:

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;

The appellant does not dispute that the Police created the record as part of their investigation into what he describes as the “mysterious” death of the deceased.

As I indicated above, the record relates to an investigation conducted by the Police into the deceased’s death. In Order MO-1449, the role of the Police in circumstances such as in the present appeal is described as:

...twofold: to establish the factual case of the event and 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.

Additionally, 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 [Order P-242].

The record at issue in this appeal is similar to one of the records in Order MO-1449, and was created from information obtained during the investigation into the circumstances of the deceased’s death. The record in this appeal is an occurrence report that records information obtained during the Police investigation, and it includes the investigating officer’s recommendation to the Coroner as to the cause of death.

I am satisfied that the record at issue in this appeal was compiled by the Police as part of their investigation into the circumstances of the deceased’s death as contemplated by section 14(3)(b).

Many previous orders of this office have considered the application of the presumption in section 14(3)(b) or its provincial equivalent in appeals concerning the sudden death of an individual (Orders M-1039, M-1072, M-1079, MO-1196, MO-1256, PO-1692, PO-1715, for example). These orders have recognized that when there is a “sudden death”, police services are called in to determine whether there was any “foul play”. Further, these orders have consistently found that the presumption in section 14(3)(b) applies to information compiled by the investigating police force during their investigation into the circumstances of the death.

The appellant appears to be seeking to apply the exception in section 14(3)(b) which provides that section 14(3)(b) does not apply “to the extent disclosure is necessary to prosecute the violation or to continue the investigation”. The appellant indicates that he intends to continue the investigation into a possible violation of the law leading up to, or surrounding, the deceased’s death. This is the reason for which the record was compiled in the first place.

I have considered the appellant’s representations concerning the exception in section 14(3)(b) and the need to disclose the information to continue an investigation. In my view, the situation is similar to that in Order MO-1410. In that case, the appellant argued that the *Act* did not specify who is to “continue the investigation”. The appellant in that case claimed that she was “entitled to continue the investigation into her spouse’s death by retaining legal counsel and an accident reconstruction expert”.

In Order MO-1410, Adjudicator Dora Nipp held:

Previous orders of this office have established that the exception contained in the phrase “continue the investigation” refers to the investigation for which the personal information was compiled, i.e. the investigation “into a possible violation of law”. Therefore, even though another party, in this situation the appellant, is continuing the investigation, this presumption applies (Orders M-249, M-718).

The situation is also similar to that in Order MO-1449. Adjudicator Laurel Cropley stated:

In the circumstances of this appeal, the investigation conducted by the Police was concluded. Therefore, the disclosure of the personal information in the records is not necessary to continue that investigation. The appellant is essentially interested in commencing a new investigation into, not only the circumstances of her brother’s death, but, apparently, into the actions of the Police with respect to the manner in which they conducted their investigation. ...I find that the exception to section 14(3)(b) does not apply.

I agree with and adopt the analysis and conclusion in Orders MO-1410 and MO-1499 and I disagree with the appellant’s argument that the presumption in section 14(3)(b) does not apply. I find that the presumption in section 14(3)(b) applies to the personal information in the record.

Based on the contents of the record, I also disagree with the appellant's assertion that the personal information can be severed from the record. I find that the personal information in the record is intertwined in such a way with the remaining information that to sever out the personal information would result in disconnected snippets, or worthless or meaningless information.

Disclosure of the personal information in the record is, therefore, presumed to constitute an unjustified invasion of personal privacy of the deceased and other identifiable individuals under section 14(3)(b). The personal information was compiled and is identifiable as part of an investigation into a possible violation of law.

Once a presumed unjustified invasion of personal privacy is established under section 14(3), it cannot be rebutted by one or more factors or circumstances under section 14(2) [*John Doe*, cited above]. Therefore, while I acknowledge the appellant's apparent interest in the information at issue to continue or to ensure the appropriateness of the police investigation, I cannot consider whether the factors raised by the appellant in sections 14(2)(a) (public scrutiny), section 14(2)(b) (promote public health and safety), 14(2)(d) (fair determination of rights), or any unlisted factor, applies.

This presumed unjustified invasion of personal privacy under section 14(3) also cannot be overcome by the exceptions in sections 14(4) as these exceptions do not apply to the information at issue.

Subject to my discussion of the "Public Interest Override", below, I conclude that the personal information in the record is exempt under section 14(1).

## **PUBLIC INTEREST OVERRIDE**

The appellant submits that there is a public interest in the disclosure of the record and relies on section 16, which states:

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.

For section 16 to apply, two requirements must be met. First, there must be a compelling public interest in disclosure of the records. Second, this interest must clearly outweigh the purpose of the exemption.

In considering whether there is a "public interest" in disclosure of the record, the first question to ask is whether there is a relationship between the record and the *Act's* central purpose of shedding light on the operations of government [Order P-984]. Previous orders have stated that in order to find a compelling public interest in disclosure, the information in the 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 [Order P-984].

A public interest does not exist where the interests being advanced are essentially private in nature [Orders P-12, P-347, P-1439]. Where a private interest in disclosure raises issues of more general application, a public interest may be found to exist [Order MO-1564].

The word “compelling” has been defined in previous orders as “rousing strong interest or attention” [Order P-984]. Any public interest in non-disclosure that may exist must also be considered [*Ontario Hydro v. Mitchinson*, [1996] O.J. No. 4636 (Div. Ct.)].

The appellant submits that:

[I]f the public, or part of the public, are or can be similarly at risk as [the deceased] had been.. [t]his would be something they have a right to know in order to take the necessary precautions for their own health and safety....

[D]isclosure of information at issue is compatible with serving the purpose of informing the citizenry about the activities of their government, is relevant to expression of public opinion and making of political choices, and can generate “rousing strong interest or attention”...

[N]o other public process or form has been established to address public interest considerations for this case and its circumstances, the law enforcement has not publicly released any information, there is currently no alternative information-disclosure mechanism for this case, and there has not been public coverage or debate due to the total lack of official information...

Given that the personal information at issue mostly relates to a person whose death was the subject of the investigation rather than who herself was the subject of the investigation into a possible violation of law, and given that the Occurrence Report is relatively short, any concern on the sensitivity of the personal information due to its having been compiled by the law enforcement and identifying the individual would be, or should be, minimal.

In this appeal, I acknowledge the appellant’s stated desire to secure the exempt personal information in order to shed light on the operations of government and inform the public about the issues he has been pursuing. However, based on my review of the record and considering all of the circumstances in this appeal, I find that there is no public interest, compelling or otherwise, in the disclosure of the personal information in this case. Rather, I find that the appellant is requesting the information for a predominantly personal reason [Order M-319].

Disclosure of the record would not raise issues of more general application, nor would it would shed light on a health or safety issue. I do not agree with the appellant that disclosure of the

record would allow either the appellant, or the public, to take the necessary precautions against a health or safety hazard or threat. I do not find that there is a compelling public interest in disclosure of the record which outweighs the protection of personal privacy. Therefore, I find that section 16 is not applicable.

**ORDER:**

I uphold the Police's decision to not disclose the record.

Original signed by: \_\_\_\_\_  
Diane Smith  
Adjudicator

\_\_\_\_\_ June 27, 2007