



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

ORDER MO-2636

Appeal MA10-255

Toronto Police Services Board



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NATURE OF THE APPEAL:

The appellant made a request to the Toronto Police Services (the police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to:

the full statement from [a named detective], [specified case number] which occurred on April 14/10 to my daughter (adopted) [named individual] re: complete results of her death and investigation.

The police located the responsive record and issued a decision granting partial access to it. The police denied access to the remainder of the record, citing the mandatory personal privacy exemption in section 14(1), with reference to the presumption in section 14(3)(b), and the discretionary personal privacy exemption in section 38(b). During mediation, the police confirmed that they were no longer relying on section 38(b) as the records does not contain the personal information of the appellant.

During the inquiry into this appeal, I sought representations from the appellant, the police and five individuals whose interests may be affected by the outcome of the appeal (affected persons). I only received representations from the police.

RECORDS:

The records at issue consist of the withheld portions of an occurrence report, including witness statements.

DISCUSSION:

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 if 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 where 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, 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 police submit that the records contain the personal information of the deceased individual, and deceased's next of kin and a number of other individuals who are identified as witnesses (the affected persons). The police submit that the information in the records is the personal information of these individuals within the meaning of paragraphs (a), (b), (c), (d), (e) and (g) of the definition of that term in section 2(1) of the *Act*.

Based on my review of the records, I find that the records contain the personal information of the deceased and five affected persons. The records do not contain any information related to the appellant. I note that the police have disclosed some of the information relating to the deceased to the appellant, including her name, address and a few details about the circumstances surrounding her death.

The personal information related to the deceased which is still at issue, includes her medical history and medical condition at the time of her death. There is also information relating to her marital or family status. I find that this is the deceased's personal information within the meaning of paragraphs (a), (b) and (g) of the definition of that term in section 2(1). Finally, I

find that the record also contains information that qualifies as the personal information of the deceased within the meaning of paragraph (h) of the definition of that term.

The records also contains the personal information of five affected persons within the meaning of paragraphs (a), (b), (c), (d), (e) and (h) of the definition of that term in section 2(1). Included in this personal information are the affected persons' views or opinions about the circumstances surrounding her death. I find that portions of the records contain the personal information of the affected persons only, particularly their names, addresses, phone numbers, dates of birth and other information not relating to the deceased.

As the information relates to individuals other than the appellant, I will now consider whether the information is exempt under section 14(1).

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. In the present appeal, only section 14(1)(f) appears relevant. Accordingly, the institution must refuse to disclose the personal information of an individual unless disclosure would not constitute an "unjustified invasion of personal privacy".

Sections 14(1) to (4) provide guidance in determining whether the unjustified invasion of personal privacy threshold is met. 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 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 (Div.Ct.)].

The police submit that they considered the factor in section 14(2)(f) (highly sensitive) to be relevant. In my view, the presumption in section 14(3)(b) is also relevant as the information was gathered in the context of a police investigation into the deceased's death.

Section 14(3)(b)

Section 14(3)(b) 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;

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 [Orders P-242 and MO-2235]. The presumption can also apply to records created as part of a law enforcement investigation where charges are subsequently withdrawn [Orders MO-2213, PO-1849 and PO-2608].

I find that the records at issue were compiled and are identifiable as part of a police investigation into the sudden death of the deceased. The investigation was conducted to determine whether the deceased's death would give rise to any criminal charges. Accordingly, the presumption in section 14(3)(b) applies to the personal information in the records. 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]. As a result, unless section 14(4) or section 16 applies, the disclosure of the personal information of individuals is presumed to be an unjustified invasion of privacy.

14(4)(c) – compassionate reasons

If any of paragraphs (a) to (c) of section 14(4) apply, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 14. I will now consider the possible application of section 14(4)(c) which states:

Despite subsection (3), a disclosure does not constitute an unjustified invasion of personal privacy if it,

discloses personal information about a deceased individual to a spouse or close relative of the deceased individual, and the disclosure is desirable for compassionate reasons.

The term “close relative” is defined in section 2(1) of the *Act* as follows:

“close relative” means a parent, child, grandparent, grandchild, brother, sister, uncle, aunt, nephew or niece, whether related by blood or adoption; (“proche parent”); and

The application of section 14(4)(c) requires a consideration of the following questions, all of which must be answered in the affirmative in order for the section to apply:

1. Do the records contain the personal information of a deceased individual?
2. Is the requester a spouse or “close relative” of the deceased individual?
3. Is the disclosure of the personal information of the deceased individual desirable for compassionate reasons, in the circumstances of the request?

[Orders MO-2237 and MO-2245]

Personal information about a deceased individual can include information that also qualifies as that of another individual. Where this is the case, the “circumstances” to be considered would include the fact that the personal information of the deceased is also the personal information of another individual or individuals. The factors and circumstances referred to in section 21(2) may provide assistance in this regard, but the overall circumstances must be considered and weighed in any application of section 14(4)(d) [Order MO-2237].

After the death of an individual, it is that person’s spouse or close relatives who are best able to act in their “best interests” with regard to whether or not particular kinds of personal information would assist them in the grieving process. The task of the institution is to determine whether, “in the circumstances, disclosure is desirable for compassionate reasons” [Order MO-2245].

The police ask that I consider the fact that the affected persons have not provided their consent to the disclosure of their personal information. The police also ask that I consider the privacy interests of the deceased, in light of the fact that it is unclear whether the deceased and the appellant were in contact prior to her death. The police also submit that I should consider the factor in section 14(2)(f) which states:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

the personal information is highly sensitive;

Lastly, the police submit that the appellant reveals in her request that she has not seen her daughter for 23 years, and thus suggests that section 14(4)(c) may not apply. I find that the police’s submission is not relevant for the purposes of my consideration of the application of this section. As found above, the records contain the personal information of the deceased along with other individuals. The appellant is the mother of the deceased and falls within the definition of “close relative” as defined in section 2(1) regardless of the date of their last contact. Therefore, I find that the first two parts of the test for the application of section 14(4)(c) have been met in this appeal. I must now determine whether disclosure of the deceased’s personal information is desirable for compassionate reasons, taking into account all of the circumstances of this request.

As stated above, prior orders of this office have found that, in some situations, the personal information of a deceased individual can include information that qualifies as the personal information of another individual. In applying this rationale for similar records to those at issue here, Assistant Commissioner Brian Beamish in Order MO-2533 found:

While some of the information is comprised of the personal information of the affected parties, intertwined with the personal information of the deceased, I find that the need to ensure that the appellant is well-informed about the circumstances

surrounding the death of her daughter outweighs the affected parties' concerns about privacy.

In arriving at this conclusion, I have carefully considered the representations submitted by the Police regarding the factors in section 21(2) that, in their view, favour privacy protection. As set out above, in an appeal involving the application of section 14(4)(c), these factors provide assistance in weighing the overall circumstances of the case. I have considered their position regarding the sensitive nature of the information in the records that touches on all of the parties, including the appellant, and the fact that this information was provided in the context of a law enforcement investigation. I have also considered that, although none of the affected parties submitted representations in this appeal, two of those parties advised the Police that they objected to the disclosure of their information to the appellant. In addition, I have taken into account the fact that the Police concluded at the end of their investigation that no foul play was involved in relation to the death of the appellant's daughter.

Similar to Order MO-2237, I have also considered the appellant's well-founded belief that the information disclosed to her to date has not provided her with clarity regarding the circumstances of death. This is a very significant factor favouring the application of section 14(4)(c).

Having regard to the purpose of section 14(4)(c), the nature of the information contained in the records, and the appellant's stated need for closure in the grieving process, in addition to the other circumstances of this appeal, I find that disclosure of the deceased's personal information to the appellant is "in the circumstances, desirable for compassionate reasons." This includes personal information of the deceased that is mixed with that of the affected parties. Accordingly, I find that section 14(4)(c) applies to all of the information at issue in this appeal, and for that reason, the disclosure of the records does not constitute an unjustified invasion of privacy.

I agree with the rationale set out by the Assistant Commissioner in Order MO-2533 and other orders of this office and apply it here.

While the appellant did not provide written representations to this office, she expressed in her request the need to have further information about her daughter's death and information about the police investigation afterward.

Personal information of deceased only

Regarding the personal information of the deceased (that which was not comingled with the affected persons' personal information), I accept the police's representations that the withheld information about the deceased is highly sensitive personal information. It relates to her life and the events surrounding her death. This information would normally be protected from disclosure under section 14(1) of the *Act*, if the appellant did not fall within the "close relative" category of

requester described in section 14(4)(c). That being said, I give considerable weight to the fact that the appellant has already received some information about the circumstances surrounding her daughter's death, but seeks additional disclosure about the events that led to her daughter's death.

Having considered the representations of the appellant and the police, I find that, in the circumstances, disclosure of the remaining personal information in the records which relates to the deceased only, is desirable for compassionate reasons and that all the requirements for the application of section 14(4)(c) have been satisfied. Accordingly, I will order the withheld personal information about the deceased to be disclosed to the appellant.

Personal information of other individuals

The police submit that the remaining withheld information contains the personal information of other identifiable individuals who have not consented to the disclosure of their personal information (the affected persons). As stated above, I gave notice to these individuals during my inquiry in this appeal, but received neither consent nor representations from any of them.

I have found above that some of the records remaining at issue contain the personal information of the appellant's daughter and that this information is comingled with that of a number of other identifiable individuals. The remaining withheld information consists of the statements of witnesses about events prior to and after the deceased's death. While I agree with the police that the appellant has been granted access to some of the Sudden Death Report, I give significant weight to the appellant's evidence respecting her need to know further details of all of the circumstances surrounding her daughter's death and the subsequent police investigation.

The relevant circumstances in this case include, the appellant's need to receive the information for closure and to better understand the circumstances around her daughter's death, the privacy interests of the affected persons and the privacy interests of the deceased. I give significant weight to the fact that much of the deceased's personal information in these records consists of the affected persons' observations and statements about the deceased prior to her death and is, therefore, her personal information under paragraph (g) of the definition of section 2(1).

I also give some weight to the representations of the police about the privacy interests of the affected persons. That being said, I have found above that some of the personal information of the affected persons, particularly their address, contact information and other information relating only to them, did not include the personal information of the deceased and is properly exempt under section 14(1).

Having considered all the circumstances around this appeal, including the representations of the police, I find that disclosure of the remaining information in the records that relates to the deceased, particularly information about the circumstances surrounding her death is desirable for compassionate reasons under the exception in section 14(4)(c). Accordingly, I find that the exception in section 14(4)(c) applies to much of the remaining information withheld in Sudden Death Report as their disclosure would not result in an unjustified invasion of personal privacy, within the meaning of section 14(1)(f). I have provided the police with a highlighted version of

the records which sets out the information whose disclosure is desirable for compassionate reasons.

ORDER:

1. I order the police to disclose to the appellant, the portions of the records which I have found should be disclosed, set out in the copy of the records that accompanies this order. For sake of clarity, I have highlighted the portions of the records that should **not** be disclosed to the appellant. The information that is not highlighted should be disclosed by **August 16, 2011** but not before **August 10, 2011**.
2. I uphold the police's decision to withhold access to the remaining information in the records.
3. In order to verify compliance with this order, I reserve the right to require the police to provide me with a copy of the records disclosed pursuant to order provision 1.

Original Signed By: _____ July 11, 2011
Stephanie Haly
Adjudicator