



Information and Privacy
Commissioner/Ontario

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

ORDER M-304

Appeal M-9300566

Metropolitan Toronto Police Services Board



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télé: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

ORDER

The Metropolitan Toronto Police Services Board (the Police) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to all records relating to any police attendance and investigation relating to the death of a named individual (the deceased). The request was made by the husband of the deceased.

The Police denied access to the information requested, and the requester appealed this decision. Mediation was not successful and notice that an inquiry was being conducted to review the decision of the Police was sent to the Police and the appellant. Representations were received from both parties.

The Police identified 15 pages of records as being responsive to this request. They consist of a one-page Homicide and Sudden Death Report, eleven pages of Supplementary Reports, and three pages of excerpts from a Police officer's notebook.

The sole issue to be determined in this appeal is whether the records contain personal information as defined in section 2(1) of the Act, and if so, whether the exemptions provided by sections 14 and 38(b) apply.

Section 2(1) of the Act defines "personal information", in part, as "recorded information about an identifiable individual". The records at issue describe the circumstances surrounding and the investigation into the death of the deceased. In my view, they contain recorded information about identifiable individuals and, therefore, qualify as "personal information" as defined in section 2(1) of the Act. Some pages contain the personal information of the appellant, the deceased, as well as other identifiable individuals. Other pages contain the personal information of the deceased only or of the deceased as well as that of other identifiable individuals.

As the death occurred within the past 30 years, section 2(2) of the Act does not apply.

Personal information of individuals other than the appellant

Once it has been determined that a record contains personal information, section 14(1) of the Act prohibits the disclosure of this information, except in certain circumstances. Specifically, section 14(1)(f) of the Act reads as follows:

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

if the disclosure does not constitute an unjustified invasion of personal privacy.

Sections 14(2), (3) and (4) of the Act provide guidance in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy.

The Police submit that sections 14(3)(a), (b) and (d) of the Act apply to the information contained in the records. These sections read as follows:

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;
- (d) relates to employment or educational history;

With respect to the application of section 14(3)(b), the Police submit:

All of the information was created a result of an investigation into the circumstances of a death. The personal information of the victim, the appellant, and the affected individuals was recorded solely as a result of the investigation into this death.

I have reviewed the pages which relate to the deceased only and to the deceased and individuals other than the appellant and, in my view, the personal information of the deceased and other identifiable individuals was compiled by the Police during their investigation into a possible violation of law. Accordingly, I am of the view that the presumption contained in section 14(3)(b) applies to all of the pages at issue.

The only way in which a section 14(3) presumption can be overcome is if the personal information at issue falls under section 14(4) of the Act or where a compelling public interest exists in disclosure of the record in which the personal information is contained, which clearly outweighs the purpose of the section 14 exemption (Order M-170).

I have considered section 14(4) of the Act and find that none of the personal information at issue falls within the scope of this provision. In addition, the appellant has not argued that the public interest override set out in section 16 of the Act applies.

Accordingly, I find that the disclosure of the personal information would constitute an unjustified invasion of the personal privacy of individuals other than the appellant and is, therefore, properly exempt from disclosure under section 14(3)(b) of the Act. It is, therefore, not necessary for me to consider the application of sections 14(3)(a) and (d).

Personal information of the appellant and other individuals

Sections 36(1) and 38, read together, provide individuals with a qualified right of access to any personal information about themselves in the custody or under the control of an institution. One of the exceptions to access is found in section 38(b) of the Act, which reads:

A head may refuse to disclose to the individual to whom the information relates personal information,

if the disclosure would constitute an unjustified invasion of another individual's personal privacy;

Under section 38(b), where a record contains the personal information of the appellant as well as that of the deceased and/or other individuals, the Police must look at the information and weigh the appellant's right of access to his own personal information against the rights of other individuals to the protection of their personal privacy. If the Police determine that disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, then section 38(b) gives the Police the discretion to deny the appellant access to his own personal information.

Sections 14(2), (3) and (4) of the Act also provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of an individual's personal privacy under section 38(b).

In my view, the same analysis as above applies to the personal information of the appellant and other identifiable individuals. Accordingly, I am of the view that the presumption contained in section 14(3)(b) applies to these records and the release of the information contained in them would constitute an unjustified invasion of the personal privacy of the deceased and other individuals.

Section 38(b) is a discretionary exemption. In weighing the right of the appellant to access to his own personal information against the right to privacy of the deceased and other individuals, the head has exercised his discretion to deny access. In reviewing the exercise of discretion of the Police in favour of refusing to disclose those pages for which I have found section 38(b) to apply, I have found nothing to indicate that the exercise of discretion was improper and would not alter it on appeal.

ORDER:

I uphold the decision of the Police.

Original signed by:
Laurel Cropley
Inquiry Officer

April 15, 1994