

**Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 305-1999
April 22, 1999**

INQUIRY RE: Media request to the West Vancouver Police Department for the name of an accident victim

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1. Description of the review

As Information and Privacy Commissioner, I conducted a written inquiry at the Office of the Information and Privacy Commissioner (the Office) on February 26, 1999 under section 56 of the *Freedom of Information and Protection of Privacy Act* (the Act). This inquiry arose out of a request for review of a decision by the West Vancouver Police Department to deny a reporter for the *North Shore News* access to the name of a deceased accident victim.

2. Documentation of the inquiry process

On October 19, 1998 the applicant submitted a request to the West Vancouver Police Department (the Police Department) for “the name of the 86-year-old woman who died on Oct. 10 after a motor vehicle accident” and “the name of the 18-year-old driver who hit the woman’s car.”

On October 26, 1998 the Police Department released the name of the driver, since a charge had been laid under the *Motor Vehicle Act*, but denied access to the name of the deceased individual, based on the fact that the family, when contacted by the Police Department, did not provide consent for the disclosure of their deceased relative’s name.

On November 10, 1998 the applicant wrote to my Office to request a review of the Police Department’s decision. On December 22, 1998 the applicant informed my Office that she would like to have the issue in this review placed before me in a formal inquiry.

On January 7, 1999 the applicant, the Police Department, a third party, and two intervenors, Canadians Against Violence Everywhere Advocating its Termination, (CAVEAT), and the Radio and Television News Directors Association, were notified that a written inquiry was scheduled for January 29, 1999. On January 14, 1999 the applicant requested a two-week extension to the inquiry date. With the agreement of the Police Department, a new inquiry date was set for February 12, 1999. On February 2, 1999 the Police Department requested a further two-week extension, which was agreed to by the applicant. The new date for the inquiry was set at February 26, 1999. The Victims Services Division, Ministry of Attorney General, was then added as a third intervenor. Victims Services Division was the only intervenor that filed a submission.

3. Issue under review and the burden of proof

The issue at this inquiry is the Police Department's application of Section 22 of the Act to the name of the deceased victim that was requested by a reporter for the *North Shore News*.

The relevant sections of the Act are as follows:

Protection of Personal Privacy

- 22(1) The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.
- (2) In determining under subsection (1) or (3) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether
- ...
- (b) the disclosure is likely to promote public health and safety or to promote the protection of the environment,
-
- (3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if
- ...
- (b) 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,
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Under section 57(2), if the record or part that the applicant is refused access to contains personal information about a third party, it is up to the applicant to prove that

disclosure of the information would not be an unreasonable invasion of the third party's personal privacy.

4. The record in dispute

In this case the record consists of the name of an individual who died after an automobile accident.

5. The applicant's case

The applicant is the senior reporter responsible for the court and police beats for the *North Shore News*. The police issued a press release on October 13, 1998, reporting that an elderly woman had died a short time after a traffic accident in West Vancouver on October 9, 1998. The applicant was unable to obtain the woman's name from the Police Department, so she made a request under the Act.

The essence of the applicant's submission is as follows:

I respectfully suggest that a car accident that results in a person's death on a public street relates to community safety and is of public interest.... Community newspapers are obliged to report on public interest issues such as serious car accidents, that is, ones that result in deaths. I suggest that the name of a deceased person in a traffic accident is an important component of the full facts of a news story....

As a reporter, I would like to consistently obtain the names of people who have died in traffic accidents from police. [*sic*]

I do not wish to obtain the name of an accident fatality by approaching grieving people, "ambulance chasing," the high school rumour mill, or staking out funeral homes. I would prefer to obtain the deceased person's name from the police.

The applicant states that she has obtained the names of other traffic accident victims from the Police Department after a request under the Act, but she cites other cases as well where this has not happened. She also claims that other Lower Mainland Police Departments "consistently release the name of people who have died in traffic accidents after next of kin have been notified." The applicant implies that non-release may give the impression that a name is being withheld for "a negative or criminal reason."

The applicant submits that the decision of the Police Department infringes the spirit and intent of the Act in this way:

But if I or other reporters are required to report news stories about serious traffic accidents without obtaining the names of deceased people from the police, I suggest some relatives and friends of deceased persons may

experience unfortunate, true invasions of their privacy, contrary to the intent of the Act.

6. The West Vancouver Police Department's case

The Police Department concluded that the name of the accident victim constituted personal information within the meaning of the Act. The Police Department further concluded that disclosure of this information was presumed to be an unreasonable invasion of the victim's personal privacy under section 22(3)(b), since the information was compiled and identifiable as part of an investigation into a possible violation of law. In such circumstances, the Police Department seeks the agreement of the next of kin to release the victim's name in a press release issued with respect to the accident.

In the present inquiry, the next of kin did not agree to the release of the victim's name:

The victim's next of kin felt very strongly that the victim's name should not be released to the media, as the death was very tragic and sudden, and friends and family were having a very difficult time dealing with the incident. The next of kin were also concerned that friends not be given notice of the death prior to the family being able to personally notify those individuals....

While next of kin do not have the statutory authority under the Act to exercise the privacy rights of the deceased in these circumstances, the WVPD [West Vancouver Police Department] believes that the wishes of the next of kin are a relevant consideration, particularly in light of the presumption in section 22(3)(b).

7. The third party's case

I received, on an *in camera* basis, a very touching letter from a member of the victim's family explaining why this person was opposed to the disclosure of the personal information in dispute.

8. The submission of the Victim Services Division, Ministry of Attorney General, as an intervenor

Victim Services Division (VSD) strongly supports the Police Department's decision to refuse the applicant access to the name of the deceased victim of the motor vehicle accident. The role of this Division is to play a leadership role with respect to victims of crime:

One of the key aspects of VSD's work is the promotion of the protection of privacy of victims of criminal offences, witnesses to such offences, and

their families. VSD is presently involved in various initiatives aimed at expanding privacy rights for victims, witnesses, and their families.

The submission of the Victim Services Division raises certain Orders by me and by my Ontario counterpart, which are discussed later in the present inquiry. See also Ontario Order M-527, Appeal M-9500010 (May 17, 1995, Holly Big Canoe, Inquiry Officer) involving the Regional Municipality of York's Police Services Board.

With respect to this specific information in dispute, the Victim Services Division submits "that information that would identify an individual as a victim or a witness should not be disclosed without the consent of that victim or witness. VSD submits that if the victim is deceased, the information should not be disclosed without the consent of the victim's next-of-kin."

9. Discussion

The threshold question is whether the name of the victim constitutes "personal information" within the meaning of the Act. The definition of "personal information" in Schedule 1 of the Act refers to "recorded information about an identifiable individual." There is no requirement that the individual be living. Indeed, as the Police Department and Victims Services Division point out, I have concluded in previous orders that deceased individuals have privacy rights: See, for example, Order No. 27-1994, October 24, 1994; Order No. 53-1995, September 18, 1995; Order No. 96-1996, April 8, 1996; and Order No. 200-1997, November 28, 1997. See also: Ontario Order M-97, Appeal M-9200203 (March 9, 1993, Holly Big Canoe, Inquiry Officer), which upheld a decision of the Belleville Board of Commissioners of Police not to give access to the name of a deceased person found in a field.

The applicant sought to invoke the notion of diminished privacy rights for persons after death to justify disclosure of the name of the victim. I do not accept that a person loses all rights to privacy immediately upon death, or even very quickly thereafter. While I accept that privacy rights of the deceased may diminish over time, the decision of whether or not to disclose personal information must be based on all of the relevant circumstances which arise under section 22(2). In this inquiry, there has not been a sufficient passage of time to argue that the deceased's privacy rights have ceased to exist.

Section 22(2)(b): Disclosures to promote public health and safety

The applicant submits that the disclosure of the name of the accident victim would not be an unreasonable invasion of her privacy, because the disclosure is likely to promote public health and safety under section 22(2)(b). She contends that a car accident that results in a person's death on a public street relates to community safety and is of public interest.

The promotion of public health and safety is one of the relevant considerations that the head of a public body must consider in reaching a decision on disclosure. I agree that information concerning traffic accidents on public streets may relate to the promotion of public health or safety for the purposes of section 22(2)(b). However, I am not persuaded that disclosure of the victim's name in the circumstances of this inquiry is necessary to promote public health or safety. I agree with the submission of the Police Department that disclosure of the name of the deceased does not further, and is not necessary for, the promotion of public health or safety. It is sufficient that the details concerning the location and circumstances of the accident were disclosed. I do not accept that the newspaper story is less credible simply because the name of the victim has not been disclosed.

The applicant also argues that "a third party or relative of a deceased may not agree to have the deceased's name released, because the third party is simply in shock, grieving, does not have a reason or does not wish any public attention to their dead relative." However, the *in camera* submission of the family member in the present inquiry set out clear and compelling reasons for refusing to agree to disclosure of the victim's name. I accept that those views are a relevant consideration which should be taken into account under section 22(2). Section 22(2) is sufficiently broad to encompass this type of consideration.

Section 22(3): Presumed unreasonable invasions of a third party's personal privacy

The Police Department concluded that disclosure of this personal information was presumed to be an unreasonable invasion of the victim's personal privacy under section 22(3)(b) of the Act, since the personal information was compiled and is identifiable as part of an investigation into a possible violation of law. Neither of the exceptions under section 22(3)(b) applied in this case.

The Police Department thus relies on section 22(3), which establishes a presumption that the disclosure of the personal information in dispute would be an unreasonable invasion of the privacy of the third party, the accident victim. See Order No. 268-1998, November 12, 1998; Order No. 71-1995, December 15, 1995; Order No. 145-1997, January 27, 1997. The Police Department also relies on Order M-6, Appeal M-910279, December 19, 1991, a decision of the Information and Privacy Commissioner of Ontario (Tom Wright), where he determined that the names of victims of an armed robbery fell within the equivalent to section 22(3)(b) of the Act, "because the information was compiled and identifiable as part of an investigation into a possible violation of law.... The Commissioner rejected the applicant news director's arguments that disclosure would in fact be helpful to the investigation...."

The general issue in this inquiry is clear cut. The Police Department received the name of the victim in the process of investigating an accident. All collection of personal information in recorded form by the Police Department is governed by section 22 of the Act. There is no question that the name of the accident victim was personal information

compiled and identifiable as part of an investigation into a possible violation of law under section 22(3)(b). The personal information of a third party cannot be disclosed by the Police Department except in accordance with the Act. The release of the personal information in dispute in the circumstances of the present inquiry would have been, in my judgement, an unreasonable invasion of the third party's personal privacy.

The applicant submits that the presumption set out in section 22(3) does not apply to this case because the investigation is complete and did not involve any wrongdoing on the part of the victim. I agree with the submission of the Police Department that this places an unduly restrictive interpretation upon section 22(3)(b) of the Act. The only requirements under that section are that the personal information be compiled and be identifiable as part of an investigation into a possible violation of law. It matters not that the investigation is complete, nor that the personal information relates to a person who did not contravene the law.

The applicant submits that the failure to disclose the name of an accident victim creates a negative impression that the police are concealing the identity of the deceased person for some unexplained reason. I agree with the Police Department's response to this argument:

...the appropriate response is to educate the public about the WVPD's obligation to comply with the Act and to protect the privacy of individuals in accordance with the principles set out in the Act...

The WVPD agrees that in some circumstances the names of victims may in fact be released, because in those cases the circumstances are such that the presumption created by section 22(3)(b) is overcome.

The applicant further submits that other police departments release names of people who have died in traffic accidents after next of kin have been notified. There is insufficient evidence before me concerning the practices of other police departments. In any event, I do not consider the practices of other police departments to be relevant to the question of whether the Police Department properly applied section 22 in this inquiry.

The applicant bears the burden of proof to establish that disclosure of the victim's name would not be an unreasonable invasion of her personal privacy. I find that the applicant has not met her burden of proof under section 22 of the Act.

Privacy rights of next of kin

The Police Department suggests that disclosure of the information in dispute in the circumstances of this inquiry also threatens the privacy of the next of kin, since "publication of the victim's name almost certainly leads to the privacy of the next of kin being compromised by revealing information that then identifies the next of kin."

The WVPD submits that the privacy of the next of kin may be a relevant consideration under section 22 where disclosure of a victim's name would, in effect, be a disclosure of the personal information of the next of kin who would be identifiable by that disclosure. Consequently, the wishes of the next of kin may be relevant both in terms of protecting the privacy of the deceased, as well as protecting the privacy of the next of kin themselves.

This issue also relates to the applicant's argument in reply that the next of kin "were not acting on behalf of the third party's privacy interests, but their own." The *in camera* submission established that there were a number of factors which motivated the family member's decision. Those factors included privacy interests relating to the accident victim. However, even if the family member were simply asserting his or her own privacy interests, I would find this acceptable in terms of information self-determination provided such a person could establish a privacy interest under section 22. The death of a parent can have direct consequences for the privacy of surviving family members of the deceased. For example, surviving family members may wish personally to notify family and friends of the death. There may be other valid reasons to support the conclusion that disclosure of the personal information of the deceased would constitute an unreasonable invasion of a surviving family member's personal privacy.

10. Order

I find that the head of the West Vancouver Police Department is required to refuse access to the information in dispute under section 22 of the Act. Under section 58(2)(c), I require the head of the West Vancouver Police Department to refuse access to the information in dispute.

David H. Flaherty
Commissioner

April 22, 1999