



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

# **ORDER P-309**

**Appeal P-910085**

**Ministry of Consumer and Commercial Relations**



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>

## O R D E R

### BACKGROUND:

The Ministry of Consumer and Commercial Relations (the "institution") received a request for access to a list of the names, dates of birth and addresses of all babies born in Ontario in 1991. The request was for continuing access on a weekly basis over the next two years. The institution denied access to the responsive records pursuant to section 21 of the Freedom of Information and Protection of Privacy Act (the "Act"). The requester appealed the institution's decision to this office.

During the course of mediation, the appellant narrowed the time frame of his request to the period of January 1 to January 17, 1991.

Because mediation was not possible, the matter proceeded to inquiry. Notice that an inquiry was being conducted to review the decision of the head was sent to the appellant and the institution. Enclosed with the Notice of Inquiry was a report prepared by the Appeals Officer, intended to assist the parties in making their representations concerning the subject matter of the appeal. Representations were received from the appellant and the institution.

### ISSUES:

The issues arising in this appeal are:

- A. Whether the information contained in the requested records qualifies as "personal information", as defined in section 2(1) of the Act.
- B. If the answer to Issue A is yes, whether the mandatory exemption provided by section 21 of the Act applies.

### SUBMISSIONS/CONCLUSIONS:

**ISSUE A: Whether the information contained in the requested records qualifies as "personal information", as defined in section 2(1) of the Act.**

Section 2(1) of the Act states in part:

"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,  
...
- (d) the address, telephone number, fingerprints or blood type of the individual,  
...
- (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 records which contain the information sought by the appellant are titled "Statement of Live Birth". I have reviewed the contents of these records and, in my view, the date of birth of each baby identified in the records qualifies as the personal information of the baby under paragraph (a) of the definition. The name of each baby qualifies as personal information of the baby under paragraph (h) of the definition, because it would reveal the fact that the baby had been born and registered in Ontario during the time period of the appellant's request. The only addresses contained in the record are the residential and mailing addresses of the mothers. However, it can reasonably be assumed that the address of the baby is the same as the address of the mother, and I find that the addresses qualify as the personal information of both the baby and the mother under paragraph (d).

**ISSUE B: If the answer to Issue A is yes, whether the mandatory exemption provided by section 21 of the Act applies.**

Section 21(1) of the Act prohibits the disclosure of personal information except in certain circumstances. One such circumstance is contained in section 21(1)(f) of the Act, which states:

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 21(2) and (3) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of an individual's personal privacy.

Section 21(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy. In its representations, the institution relies on section 21(3)(a) of the Act, which reads:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;

The institution claims that "the fact that a child was born on a certain date is part of the medical history ...". In my view, the name, address and date of birth of an individual do not relate to that individual's medical history. Accordingly, I find that the requirements for a presumed unjustified invasion of personal privacy under section 21(3)(a) of the Act have not been satisfied.

Section 21(2) provides some criteria for the head to consider in determining whether disclosure of personal information would result in an unjustified invasion of the personal privacy of the individual to whom the information relates. The appellant submits that section 21(2)(c) is a relevant consideration.

Section 21(2)(c) 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,

access to the personal information will promote informed choice in the purchase of goods and services;

The appellant represents a company which markets baby food. He states that "permitting a reputable company in the private sector access to the requested information will help parents make an informed choice about the baby nutrition and the nutritional products available".

The institution submits that section 21(2)(c) is not a relevant consideration because the personal information itself does not relate to goods or services and would not help the public make a more informed choice".

I have reviewed the material which the appellant intends to distribute, and which he claims will "promote informed choice in the purchase of goods and services". While some of the material consists of general nutrition information which makes no mention of the appellant's products, in my view, this type of information is otherwise readily accessible, and I am not satisfied that section 21(2)(c) is sufficiently relevant in the circumstances. The remainder of the information promotes the appellant's products. As I pointed out in Order P-307, dated June 4, 1992, in my view, section 21(2)(c) is not intended to create an exception to the mandatory personal information exemption for the purpose of making mailing lists available to the public for marketing purposes, and I find that section 21(2)(c) is not a relevant consideration in the circumstances of this appeal.

The institution raises the possible application of sections 21(2)(e), (f) and (h).

Sections 21(2)(e), (f) and (h) state:

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,

- (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
- (f) the personal information is highly sensitive;

- (h) the personal information has been supplied by the individual to whom the information relates in confidence;

The institution has not provided sufficient evidence to establish the relevance of sections 21(2)(e) or (f), and I find that they are not relevant considerations in the circumstances of this appeal.

With respect to section 21(2)(h), the institution submits:

The Vital Statistics Act has historically been a confidentiality statute, predating FIPPA. The Vital Statistics Act, 1948, S.O. 1948, c. 97, established a confidentiality provision (s.48) and restricted access to the information at the discretion of the Registrar General ... These provisions continue to the present day in the Vital Statistics Act, R.S.O. 1990, c. V.4 ... There is a reasonable and continuing public expectation that the birth information required to be provided under the Vital Statistics Act will be kept confidential and not be disclosed to the public for commercial purposes.

The information at issue in these appeals is collected by the institution on a form entitled "Statement of Live Birth". The following statement appears on that form:

Personal information contained on this form is collected under the authority of the Vital Statistics Act, R.S.O. 1980, c.524 and will be used to register and record the birth, still-birth, death, marriage, addition or change of name, correction or amendment, provide certified copies, extracts certificates, search notices, photocopies; and for statistical, research, medical, law enforcement, adoption and adoption disclosure purposes.

In my view, it would be reasonable for a parent to infer from this statement that the information on the form would be kept confidential except in the circumstances outlined on the form. In my view, the names and dates of birth of the babies and addresses of the mothers were otherwise provided to the institution implicitly in confidence.

Further, section 45(1) of the Vital Statistics Act states:

No certified copy of a registration of birth, change of name, death or still-birth shall be issued except to a person authorized by the Registrar General or the order of a court and upon payment of the prescribed fee. [Emphasis added.]

While the provision found in section 45(1) of the Vital Statistics Act does not override the access provisions of the Act, it is my opinion that individuals registering the required notice would reasonably expect that the information provided would remain confidential.

In my view, section 21(2)(h) is a relevant consideration in the circumstances of this appeal, weighing against disclosure of the record.

I find that disclosure of the information contained in the records would constitute an unjustified invasion of the personal privacy of the individuals named in the records.

**ORDER:**

I uphold the head's decision.

Original signed by: \_\_\_\_\_  
Tom Mitchinson  
Assistant Commissioner

\_\_\_\_\_ June 8, 1992