



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

# **ORDER P-1031**

**Appeal P-9500244**

**Ministry of Consumer and Commercial Relations**



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## **NATURE OF THE APPEAL:**

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). The Ministry of Consumer and Commercial Relations (the Ministry) received a request from an individual for access to the “unamended version of [his] birth certificate”, as well as to any explanatory notes or documents which may have accompanied the original birth certificate.

The requester had previously obtained a certified copy of his birth registration from the Office of the Registrar General (the ORG), under the provisions of the Vital Statistics Act. Items 8 to 13 of the birth registration had been covered over by a glued piece of paper and therefore appeared as a blank on the photocopy. The requester wants to ascertain the nature of the information under the covered portion of the registration. The Ministry indicates that a “birth certificate” is only an extract of information from a long form registration, which is the record in which the requester is interested.

The Ministry responded by advising the requester that it could not provide him with a copy of his unamended birth registration because to remove the overlay would risk damaging and destroying the original record. The Ministry thus claimed that, pursuant to section 30(1) of the Act, it was not practical to reproduce the record. It did advise the requester that, pursuant to section 30(2) of the Act, he could view the original document. The Ministry also stated that there were no other documents which accompanied the original registration.

The requester appealed both aspects of the Ministry’s decision.

A Notice of Inquiry was sent to the Ministry and the appellant. Representations were received from both parties. Because the record appeared to contain the personal information of the appellant, a Supplementary Notice of Inquiry was sent to the parties to solicit their comments on the application of section 48 of the Act. Again, representations were received from both the Ministry and the appellant.

The issues to be determined in this appeal are as follows:

- (1) Whether section 30(1) or 48(1) of the Act applies to the part of the record at issue; and
- (2) Whether the Ministry’s search for all responsive records was reasonable in the circumstances of this appeal.

## **DISCUSSION:**

### **WHETHER SECTION 30(1) OR 48(1) APPLIES TO THE PART OF THE RECORD AT ISSUE**

As I have indicated, the Ministry’s decision was made under section 30(1) of the Act which states:

Subject to subsection (2), a person who is given access to a record or a part thereof under this Act shall be given a copy thereof unless it would not be reasonably practicable to reproduce the record or part thereof by reason of its length or nature, in which case the

person shall be given an opportunity to examine the record or part thereof in accordance with the regulations.

Section 30 is found in Part II of the Act, that dealing with access to general records, including requests for another individual's personal information.

Section 48 of the Act states:

- (1) An individual seeking access to personal information about the individual shall make a request therefor in writing to the institution that the individual believes has custody or control of the personal information and shall identify the personal information bank or otherwise identify the location of the personal information.
- (2) Subsections 10(2) and 24(2) and sections 25, 26, 27, 28 and 29 apply with necessary modifications to a request made under subsection (1).
- (3) Subject to the regulations, where an individual is to be given access to personal information requested under subsection (1), the head shall,
  - (a) permit the individual to examine the personal information; or
  - (b) provide the individual with a copy thereof.
- (4) Where access to personal information is to be given, the head shall ensure that the personal information is provided to the individual in a comprehensible form and in a manner which indicates the general terms and conditions under which the personal information is stored and used.

Section 48 is found in Part III of the Act which addresses issues related to one's own personal information.

In its supplementary representations, the Ministry states that this matter must be decided under section 30(1) of the Act as the information at issue, items 8 to 13 on the birth registration, appear under the heading "Father". According to this argument, this information would be analysed under the general records provisions in the Act (Part II), rather than the provisions relating to requests for one's own personal information (Part III). On this basis, the Ministry maintains that, as the appellant is seeking access to the personal information of his father, rather than to his own personal information, section 48 has no application.

To support this position, the Ministry refers to Order P-309 in which former Assistant Commissioner Tom Mitchinson analysed a record entitled "Statement of Live Birth" which contained the names and date of birth of babies born in Ontario, as well as the residential and mailing addresses of the mothers of the babies. The former Assistant Commissioner concluded that the addresses of the mothers constituted the personal information of both the babies and the mothers only because it could be reasonably assumed that the address of the baby was the same as the address of the mother. The Ministry states that:

... the Assistant Commissioner was careful in his characterization of personal information on a birth registration and **considered each piece of information separately**. [emphasis added]

However, this order was decided before the Commissioner's office published the October 1993 edition of IPC Practices entitled "Responding to Requests for Personal Information". Amongst other things, this document sets out the approach which institutions should follow when responding to a request for access to records which contain **any** of the requester's personal information:

Evaluate the request under Part III of the provincial Act (Part II of the municipal Act). The sections found in these parts of the Acts provide guidance to institutions regarding disclosure of personal information.

This approach establishes the **record** as the unit of analysis, rather than individual paragraphs, sentences or words contained in a record.

In Order M-352, Inquiry Officer John Higgins addressed this issue in great detail and concluded that:

In my view, the record-by-record analysis best reflects the special character of requests for records containing one's own personal information, and it provides a practical, uniform procedure which institutions can apply in a consistent manner.

I agree with this approach and will apply it to the circumstances of this appeal.

Because of my findings (which immediately follow) on the nature of the personal information contained in the record, I will consider the appellant's access rights on the basis of section 48 of the Act.

"Personal information" is defined in section 2 of the Act, in part, as "... recorded information about an identifiable individual."

The appellant has requested access to a copy of his "unamended birth certificate". This document contains the personal information of the appellant - his name, date and place of birth. It also includes the personal information of other individuals - his mother's name, residence, racial origin, age, birthplace, occupation, etc. As I have indicated, it is sections 8 to 13 of the document, which would presumably contain the corresponding information about his father, which are at issue. Given that the **record** contains the personal information of the appellant and other individuals, section 48 applies to determine the method of access in this appeal.

The Ministry recognizes, however, that this section does not provide it with an unfettered right to decide which method of access a requester may have to a record. It refers to Order P-233 in which Commissioner Tom Wright held that an individual who seeks access to his or her personal information should have the same access rights under section 48 as are outlined in section 30. He stated:

In my view, a person who is given access to his or her own personal information should not have a lesser right of access than the person who is given access to general information. In fact, given that personal information is involved, that right should, if anything, be a higher right. Accordingly, I am of the opinion that in applying subsection 48(3), the institution must use the same criteria as provided in section 30 when deciding whether to grant the method of access preferred by the requester. Where the person who is given access to his or her own personal information requests a particular method of access, **the head must establish why it would not be reasonably practicable to comply with the preferred method of access.** [emphasis added]

In this case, the Ministry has provided the appellant with an explanation as to why it is not reasonably practicable to provide him with a copy of his “unamended birth certificate”. After the Ministry provided a copy of the birth registration to the appellant, the Program Manager of the ORG (the Program Manager) removed as much of the overlay, as in her opinion, was possible without damaging the original birth registration.

I personally viewed the original birth registration after the removal of the overlay. Only very thin transparent patches of paper and glue now remain on sections 8 to 13. It is clear that no information about the appellant’s father was originally written in these sections. This portion of the birth registration only contains “two squiggly vertical lines” as described by the appellant in his submissions.

Having viewed this document, I agree with the assessment of the Program Manager that it is not reasonably practicable to remove any more of the overlay without damaging the original of the registration. Thus I find that the Ministry has complied with the provisions of section 48(3) of the Act. However, I believe that the Ministry should provide the appellant with a copy of the registration in its current form, that is, with the overlay removed.

The appellant has also indicated that, pursuant to section 48(4), he seeks an explanation of the various idiosyncrasies which exist on his birth registration form. In my view, the explanations sought by the appellant do not fall within this section in that he wishes to understand the circumstances surrounding the completion of the birth registration in 1936. This is not a matter of providing the information in a comprehensible form or a description of the terms and conditions under which the personal information is stored and used. However, the Ministry could perhaps provide the appellant with a general explanation of the circumstances in which birth registrations of that era contained similar markings to those found on that of the appellant.

In addition, as part of his request for clarification of some of the information on his birth registration, the appellant has requested, in his submissions:

... a list of the names and addresses of all parties who have paid for a search and copy of my birth certificate since April 28, 1936.

Should the appellant wish to pursue this matter, he should submit a new request to the Ministry.

## REASONABLENESS OF SEARCH

The appellant has also questioned whether he has been provided with all the records he has requested from the Ministry.

The Ministry's representations include the affidavit of the Program Manager, an individual who has been employed by that office for 27 years and who is familiar with the records kept by the ORG.

The Program Manager located the original paper record of the birth certificate in the ORG storage facility. She states that there were no documents either attached to, or filed with the registration in the registration book containing the certificate. Nor were there any explanatory notes on either the front or back of the registration itself. The Program Manager also states that, to the best of her knowledge, if there had been any other documents filed in respect of the registration, the registration would have contained a notation to this effect. The notation would include a unique filing number under which the associated documentation would have been filed. The appellant's birth registration contains no such notation.

Despite the fact that there was no such notation and filing number, the Program Manager indicates that the Team Manager of Registrations in the ORG in Thunder Bay (the Team Manager) conducted a further search for any information that may have been filed in respect of the appellant's birth registration. The Team Manager:

- (1) Searched all Correction Index Books which list corrections under the person's name alphabetically and found no entry for a correction related to an individual with the appellant's name and date of birth;
- (2) Checked the Evidence Log to determine if any miscellaneous evidence for the year of the appellant's birth had been microfilmed and found no such entry in the log;
- (3) Reviewed several reels of microfilm records of birth registrations for the year of the appellant's birth to confirm that they only contained the registrations themselves and not evidence that might have been filed with them - they contained no such evidence; and
- (4) Contacted an individual of the Division Registrar's Office at the City of Toronto to see if that office held a duplicate of the original birth registration or any documents which may have accompanied the registration - they did not.

Where a requester provides sufficient details about the records which he or she is seeking and the Ministry indicates that such records do not exist, it is my responsibility to ensure that the Ministry has made a reasonable search to identify any records which are responsive to the request. The Act does not require the Ministry to prove with absolute certainty that the requested records do not exist. However, in my view, in order to properly discharge its obligations under the Act, the Ministry must provide me with sufficient evidence to show that they have made a **reasonable** effort to identify and locate records responsive to the request.

The Ministry indicates that the appellant has not provided it with information that the records he seeks actually existed. The appellant points to “defects” in the birth certificate which remain “unaccounted for” and legislation which existed at the time the certificate was completed as pointing to the existence of such documentation. In particular, the appellant suggests that there should exist correspondence between the registrar or deputy registrar of vital statistics and members of the public for the period between the appellant’s birth and the date of the registration or later.

Based on the information provided by the Ministry, and in particular, the additional inquiries carried out by the Team Manager, it appears that at least some of the additional information which the appellant seeks, if it existed, would have been located in the four areas searched by the Team Manager. Having considered all the information provided by the appellant and the Ministry, I am satisfied that, in the circumstances of this appeal, the searches conducted by the Ministry for records responsive to the request were reasonable.

**ORDER:**

1. I order the Ministry to provide the appellant with a copy of the birth registration as it currently appears with the overlay removed within fifteen (15) days of the date of this order.
2. I uphold the search undertaken by the Ministry for any records which may have accompanied the birth certificate.
3. In order to verify compliance with the provisions of this order, I reserve the right to require the Ministry to provide me with a copy of the record which is disclosed to the appellant pursuant to Provision 1.

Original signed by: \_\_\_\_\_  
Anita Fineberg  
Inquiry Officer

\_\_\_\_\_ October 23, 1995