



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

# **ORDER P-1093**

**Appeal P-9500519**

**Public Guardian and Trustee**



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## **NATURE OF THE APPEAL:**

The Public Guardian and Trustee (the Trustee) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for all records relating to the capacity assessment of the requester's son undertaken by the Trustee. The Trustee located one record which was responsive to the request and denied the requester access to it, based on the following exemptions contained in the Act:

- invasion of privacy - sections 21 and 49(b)

The record at issue is a 12-page Certificate of Incapacity to Manage Property prepared pursuant to section 16(3) of the Substitute Decisions Act, 1992 (the SDA).

The requester appealed the Trustee's decision to deny access. A Notice of Inquiry was provided to the appellant, the Trustee and to the appellant's son and his wife (the affected persons). Representations were received from all of the parties.

As well as being the head under the Act, the Trustee is also the guardian of property for the appellant's son for the purposes of section 66(b) of the Act which states:

Any right or power conferred on an individual by this Act may be exercised,

by the individual's attorney under a continuing power of attorney, the individual's attorney under a validated power of attorney for personal care, the individual's guardian of the person, or the individual's guardian of property;

The parties to this appeal agree that section 66(b) of the Act confers upon the Trustee in its capacity as the guardian of property all rights or powers under the Act of the appellant's son, who is the subject of the Certificate. Accordingly, there is no dispute as to the ability of the Trustee to act both as the head and the representative of an affected person in this appeal. Accordingly, the Trustee submitted representations on its own behalf and in its capacity as the guardian of property of the appellant's son.

## **DISCUSSION:**

### **INVASION OF PRIVACY**

The Act defines personal information, in part, as recorded information about an identifiable individual.

Section 47(1) of the Act gives individuals a general right of access to their own personal information held by a government body. Section 49 provides a number of exceptions to this general right of access.

Under section 49(b) of the Act, where a record contains the personal information of both the appellant and other individuals and the Trustee determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the Trustee has the discretion to deny the appellant access to that information.

Where, however, the record only contains the personal information of other individuals, and the disclosure of this information would constitute an unjustified invasion of the personal privacy of these individuals, section 21(1) of the Act prohibits an institution from releasing this information.

In both of these situations, sections 21(2), (3) and (4) of the Act provide guidance in determining whether the disclosure of personal information would constitute an unjustified invasion of the personal privacy of the individual to whom the information relates.

In my view, the record as a whole contains primarily the personal information of the appellant's son, who is the subject of the Certificate. The record also contains the personal information of individuals other than the son or the appellant. The appellant's personal information is found in only a few discrete portions of the record. The Trustee has applied sections 21 and 49(b) of the Act to the record at issue. Accordingly, I will assess the application of section 21 to the personal information of individuals other than the appellant and the appellant's personal information under section 49(b).

#### **PERSONAL INFORMATION OF INDIVIDUALS OTHER THAN THE APPELLANT**

The Certificate was completed by an assessor as defined by section 1(1) of the SDA. The assessor provided her opinion as to the son's capacity to manage property and the basis upon which that opinion was reached. She also listed the documentation which she reviewed and persons whom she interviewed.

In her representations, the appellant's son's wife submits that disclosure of the record may have a direct, negative effect on her and her husband (section 21(2)(e) - unfair exposure to pecuniary or other harm). She also submits that section 21(3) of the Act applies because the record contains information regarding the medical and psychological history (section 21(3)(a)) and the finances (section 21(3)(f)) of her husband.

The Trustee, acting both as head and as guardian of property for the appellant's son, submits that presumptions found in section 21(3) apply to the record because it relates to the son's medical and psychological condition as well as his financial and educational history.

The appellant submits that although section 21(3) of the Act might be applied, the issue in this case is whether disclosure of the record would constitute an **unjustified** invasion of personal privacy. He refers to 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.

The appellant argues that it would be reasonable to conclude that he is aware of his son's views, and probably also those of his son's wife because of the close familial connection between himself and his son and the fact that, until recently, the son lived with him. The appellant further states that it would also be reasonable to conclude that he would be aware of the son's educational or medical history or evaluation.

The appellant further submits that it is the intention of the assessment contained in the Certificate, and the statutory duty of the Trustee, to act in his son's interests. If the sharing of the information in the Certificate can reasonably be considered to be of benefit to his son, then the disclosure of the information at issue cannot be considered unjustified. At the same time, if the assessment is not complete and the conclusions reached are not accurate, the extent to which his son is perceived to be able to give instructions may be inaccurate. In his view, this could negatively affect his son's interests with respect to his finances.

The appellant also expresses concern with respect to whether the person conducting the assessment is fully qualified to undertake that task. This concern is based on the technical and medical expertise he suggests is required to conduct such an assessment, and which the assessor may lack.

Finally, the appellant submits that in order to properly assist the Trustee to act as guardian of property, it would be in his son's best interests for his family to provide input on the information contained in the Certificate.

The record discusses the son's ability to manage property. It discusses his current medical condition, provides his educational background and describes his finances. Based on these and other factors, the assessor reached a conclusion as to the son's capacity to manage his property.

I have not been provided with any evidence to demonstrate that the information contained in the Certificate is incorrect in any way or that the son's interests have not been fully addressed by the Trustee. Accordingly, I am not persuaded that the disclosure of the information at issue would benefit the son in the manner suggested by the appellant. I have reviewed the record and the representations and I find that the following presumptions apply to the personal information of the son: sections 21(3)(a) (medical, psychological history and evaluation), 21(3)(d) (educational history), 21(3)(f) (individual's finances and assets) and 21(3)(g) (personal evaluations).

Where one of the presumptions found in section 21(3) applies to the personal information found in a record, the only way such a presumption against disclosure can be overcome is

where the personal information falls under section 21(4) or where a finding is made that section 23 of the Act applies to the personal information. Even if I agreed with the appellant that the Certificate contains inaccurate information, I could not consider this a factor which favours disclosure under section 21(2) if I find that one or more of the presumptions found in section 21(3) applies.

I have received no representations with respect to the application of section 21(4) to the record. Having reviewed the record, it is my view that section 21(4) has no application in the circumstances of this appeal.

Accordingly, I find that the portions of the record which contain the personal information of individuals other than the appellant are exempt from disclosure under section 21(1) of the Act.

### **PERSONAL INFORMATION OF THE APPELLANT**

In my view, the presumptions contained in sections 21(3)(f) and (g) have equal application to those portions of the record which contain the personal information of the appellant as well as that of other individuals. I find that, as the requirements of a presumed unjustified invasion of privacy of individuals other than the appellant have been met, section 49(b) applies to exempt the appellant's personal information from disclosure.

The only exception to this is found on page 2 of the record, under item 9(iv), which provides the appellant's name, address, telephone number and relationship to his son. It also indicates that there was a telephone contact by the assessor with the appellant on a specific date. In my view, disclosure of this information would not result in an unjustified invasion of the privacy of the appellant or any other individual. Accordingly, this information should be disclosed to the appellant.

With respect to section 23 of the Act, the appellant submits that it is necessary to examine the underlying intent of the SDA and the roles of the Trustee and of his family. He suggests that the SDA provides that if it is determined that a person is in fact incapable of managing their own property, the person, along with his or her family and friends should be involved to the largest extent possible. As the person's family and friends know the incapable person best, particularly where the guardian of property is an institution, sharing information would be in the incapable person's best interests. Where it is possible that the guardian does not have full information with respect to the person's limitations, then as a matter of public policy, the information should be shared so that the best decisions and determinations are made.

As noted above, I have not been provided with any evidence which would establish that the assessment is flawed in such a manner as to raise the concerns expressed by the appellant. I am also not persuaded that, in the circumstances of this appeal, there exists a compelling **public**, as opposed to a private interest, which clearly outweighs the purpose of the section 21 exemption.

In summary, with the sole exception noted above, I find that the record in its entirety is exempt from disclosure under sections 21 and 49(b) of the Act.

**ORDER:**

1. I order the Trustee to disclose to the appellant the information contained in item 9(iv) on page 2 of the record by sending him a copy not later than **February 9, 1996**, but not earlier than **February 5, 1996**.
2. I uphold the decision of the Trustee not to disclose the remainder of the record.
3. In order to verify compliance with the provisions of this order, I reserve the right to require the Trustee to provide me with a copy of that portion of the record which is disclosed to the appellant pursuant to Provision 1.

Original signed by: \_\_\_\_\_ January 5, 1996  
Donald Hale  
Inquiry Officer