



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER P-1444**

**Appeal P\_9700066**

**Office of the Public Guardian and Trustee**



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## **BACKGROUND:**

The Estates Department of the Office of the Public Guardian and Trustee (the Public Trustee) deals with estates of individuals who die without leaving a will and where there is no next of kin available to administer the estate. One of the matters the Public Trustee is asked to deal with is the arrangement of a funeral and the burial of the individual. Once this is done the Public trustee applies to court to be Estate Administrator Without a Will. The Public Trustee also obtains the long form death certificate which contains information such as the date of death and place of burial or cremation.

## **NATURE OF THE APPEAL:**

The Public Trustee received a request under the Freedom of Information and Protection of Privacy Act (the Act) for a record containing the places of burial or cremation of 20 individuals. The date of death for these individuals ranged from 1964 to 1983. The Public Trustee granted access to information regarding one individual who died in 1964 but refused to grant access to the information about the other 19 individuals based on the following exemption:

- section 21 - invasion of privacy

The requester (now the appellant) appealed this decision to the Commissioner's office. This office sent a Notice of Inquiry to the Public Trustee and the appellant. Representations were received from both parties.

The Public Trustee provided a sample of the responsive record. The information at issue is the name and place of burial or cremation of 19 individuals. The information is located in each individual's file at the Public Trustee.

## **DISCUSSION:**

### **PERSONAL INFORMATION**

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including the individual's name where it appears with other information relating to the individual.

Section 2(2) of the Act provides that personal information does not include information about an individual who has been dead for more than 30 years.

The appellant argues that the remaining information should be disclosed because the individuals are deceased. The Public Trustee submits that the information with respect to the 19 individuals constitutes their personal information because all of these individuals died less than 30 years ago. I agree.

## INVASION OF PRIVACY

Once it has been determined that a record contains personal information, section 21(1) of the Act prohibits the disclosure of this information unless one of the exceptions listed in the section applies.

The appellant specifically raises section 21(1)(d). He believes that the Cemeteries Act authorizes the disclosure of the information he is requesting. Section 21(1)(d) of the Act states:

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

under an Act of Ontario or Canada that expressly authorized the disclosure;

In the Notice of Inquiry, the parties were requested to address the relevance of the Cemeteries Act, as well as the application of section 21.

The Cemeteries Act was repealed and replaced by the Cemeteries Act (Revised) in 1992. Paragraphs 20 and 25 of section 76(1) of the Cemeteries Act (Revised) state that the Lieutenant Governor in Council may make regulations:

20. prescribing records and information to be kept by licensees:
25. prescribing information to be provided to the public, any person or any class of persons and prescribing the manner of providing that information;

Section 38 of Ontario Regulation 130/92 states that a cemetery owner shall make available for inspection a public register containing certain information including:

3. The name of each person whose remains are interred in the cemetery, ... and the date on which the remains were interred.
4. The name of each person whose remains were cremated in the crematorium, if any, and the date on which the remains were cremated.

In its representations, the Public Trustee states:

A review of [the Cemeteries Act Revised] indicates that it does not authorize disclosure of the information by the Office of the Public Guardian and Trustee. The Public Guardian and Trustee is requested to deal with the trust funds and passing of accounts regarding cemeteries and they are also requested to act as trustee for care and maintenance funds in relation to cemeteries. The Public Guardian and Trustee is not in any way authorized to release information pursuant to the said Act.

In Order M-484, Inquiry Officer Holly Big Canoe addressed an argument similar to the appellant's with respect to regulations made under the Independent Health Facilities Act which authorizes licensees to disclose information in certain circumstances. In finding that the municipal equivalent of the exception found in section 21(1)(d) did not apply, Inquiry Officer Big Canoe held that because the institution was not a licensee under the Independent Health Facilities Act, the provisions and regulations made under it were not relevant in the circumstances of the appeal. Inquiry Officer Big Canoe reconsidered Order M-484 in Order M-787 and re-affirmed her finding on this point.

I agree with the reasoning of Inquiry Officer Big Canoe and adopt it for the purposes of this appeal.

I have reviewed the information at issue and the representations and, in my view, section 21(1)(d) does not apply in the circumstances of this appeal. The Public Trustee is not a licensee or owner under the Cemeteries Act (Revised), therefore, the provisions and regulations made under it are not relevant in the circumstances of this appeal.

Having found that section 21(1)(d) is not applicable in the circumstances of this appeal, the only other exception to the section 21(1) mandatory exemption which has potential application in the circumstances of this appeal is section 21(1)(f), which 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.

Because section 21(1)(f) is an exception to the mandatory exemption which prohibits the disclosure of personal information, in order for me to find that section 21(1)(f) applies, I must find that disclosure of the personal information would **not** constitute an unjustified invasion of personal privacy.

Disclosing the types of personal information listed in section 21(3) is presumed to be an unjustified invasion of personal privacy. If one of the presumptions applies, the institution can disclose the personal information only if it falls under section 21(4) or if section 23 applies to it.

If none of the presumptions in section 21(3) apply, the institution must consider the factors listed in section 21(2), as well as all other relevant circumstances. The appellant has not raised any relevant circumstances or factors which weigh in favour of disclosure of the personal information at issue. Accordingly, I find that the exception in section 21(1)(f) does not apply and that disclosure would constitute an unjustified invasion of personal privacy.

## **ORDER:**

I uphold the decision of the Public Trustee.

Original signed by: \_\_\_\_\_  
Marianne Miller  
Inquiry Officer

\_\_\_\_\_ August 22, 1997