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

ORDER P-1493

Appeals P_9700008 and P_9700017

Ministry of Consumer and Commercial Relations

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NATURE OF THE APPEALS:

The Ministry of Consumer and Commercial Relations (the Ministry) received two requests under the Freedom of Information and Protection of Privacy Act (the Act). Request I23-96 was for access to a certified copy of the marriage record of a named individual (Record 1); and Request I28-96 was for access to a certified copy of the death record of a second named individual (Record 2). Each request was accompanied by a draft "Form 1" agreement. This form is used by applicants who are seeking access to personal information for research purposes and wish to comply with the requirements of section 21(1)(e) of the Act. The requester is a genealogist who locates heirs to unclaimed assets and estates being administered by the Office of the Public Guardian and Trustee.

The Ministry denied access to both records pursuant to the following exemption claim:

- invasion of privacy - section 21(1)

The Ministry also denied the requester's proposals to enter into research agreements, and advised him that, pursuant to the Vital Statistics Act (the VSA), he was not entitled to receive certified copies of the records.

The requester (now the appellant) appealed both decisions.

During mediation, the Ministry reconsidered its position and granted partial access to both records. The Ministry also contended that one of the appeals (P-9700008) was filed outside of the time limits prescribed by section 50(2) of the Act. The appellant raised the possible application of the "public interest override" under section 23 of the Act.

This office provided a Notice of Inquiry to the appellant and the Ministry. Representations were received from both parties.

PRELIMINARY MATTER:

Late filing of the appeal

Section 50(2) of the Act states:

> An appeal under subsection (1) shall be made within thirty days after the notice was given of the decision appealed from by filing with the Commissioner written notice of appeal.

The Ministry maintains that its decision which led to Appeal P-9700008 was made on November 19, 1996, and the appeal was not filed until January 13, 1997, some 55 days later. The Ministry states:

> Even if one takes into consideration various holidays and/or delays in receipt of the Institution's decision, it is apparent that the Requester's appeal is at least 2 weeks outside of the time limit prescribed by section 50(2) of the Act. The time limits contained in the Act exist for a purpose. It permits the parties to have some certainty as to the time required for dealing with particular files. The appeal time limits exists so that the Institutions involved can have some closure on the request process. This case involves a commercial Requester who has resources available to it that may not otherwise be available to an individual requester. The Requester in this case is not requesting access to his own personal information but for other information in the possession of the Ministry. It would not be unreasonable for the Institution and the Commission to require a commercial requester seeking access to information for commercial gain to rigidly adhere to the appeal filing requirements.

The appellant states that the November 19, 1996 decision letter was not received until on or about December 19, 1996, and that the appeal was filed within the subsequent 30-day period prescribed by statute. The appellant also points out that his request was made on September 19, 1996, and not responded to by the Ministry until November 19, 1996, well beyond the 30-day statutory requirement contained in section 26 of the Act. The appellant goes on to state:

> It is the Appellant's position that even if Appeal P-9700008 was filed beyond the thirty day period, the Ministry was late in responding to the initial request in any event and has attorned to the jurisdiction of the Commission by re-considering its decision and providing partial disclosure on March 21, 1997 without raising the issue of the timing of the appeal
>
> In the event that the appeal P-700008 is found to be out of time, it would be the Appellant's intention to re-submit the request for information and if disclosure were to be refused on the same basis, the Appellant would appeal the said decision.

In Order M-775, Inquiry Officer Laurel Cropely discussed the meaning of the terms "the notice was given" and "filing" in section 39(2) of the Municipal Freedom of Information and Protection of Privacy Act (the equivalent of section 50(2) of the Act). She found that the 30-day time period for filing an appeal begins to run after the institution's decision is received by the requester, and that the date of mailing an appeal letter by the requester is the effective date for "filing" an appeal. I agree. Inquiry Officer Cropley also went on to quote with approval several comments made in Order 155 by former Commissioner Sidney B. Linden:

> The nature of the appeals system envisaged by the Act is informal. The policy of the Act as outlined in section 1 thereof is to promote access to information in the custody or under the control of government institutions, and to provide for the protection of personal privacy.

In view of these circumstances, Commissioner Linden states that the Act should be interpreted:

> ... liberally in favour of access to the process, rather than strictly to deny access. This is especially true where the alleged lapse of time after the date when an appeal should have been filed is not significant, and where no prejudice has been shown by the institution or any other person affected by the alleged delay.

I also agree with the views expressed by former Commissioner Linden. If I accept the appellant's position that he received the Ministry's decision letter on December 19, 1996, then his appeal was filed within the allowable time period outlined in section 50(2). However, even if I were to reject the appellant's position, any delay in filing the appeal is not significant, and the Ministry has not provided me with sufficient evidence to indicate that it would be prejudiced by proceeding. I also find it relevant that, despite raising the issue of timing, the Ministry participated in mediation and issued a new decision letter, actions which, in my view, are inconsistent with a subsequent claim for a strict interpretation of section 50(2). I also feel it would be inequitable to allow the Ministry to impose a strict reading of the time limits in the Act after breaching one of them in its own handling of the matter. Finally, I reject the Ministry's suggestion that the appellant should be held to a stricter standard simply because he is a commercial rather than a personal requester.

For all these reasons, I have decided to proceed with Appeal P-9700008.

Certified copies of the records

The appellant argues that he is entitled to certified copies because sections 41 and 42 of the VSA clearly permit the Registrar General to issue certified copies of birth, marriage and death certificates.

The Ministry agrees that certified copies of records are available to certain individuals under the provisions of the VSA, but points out the appellant's requests were made under the Act and not the VSA. The Ministry submits that section 30(1) of the Act requires that "a person who is given access to a record or part thereof under this Act shall be given a copy thereof", and that there is no provision or requirement that certified copies be provided. The Ministry also argues that in order to provide certified copies, it would have to create new records, and that it is not possible to provide a certified copy of a severed record.

I accept the Ministry's position. I find there is nothing in the Act that entitles the appellant to certified copies of records.

DISCUSSION:

PERSONAL INFORMATION/INVASION OF PRIVACY

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual. Both parties agree that the records contain personal information of individuals other than the appellant, and I concur.

Section 2(2) of the Act states:

> Personal information does not include information about an individual who has been dead for more than thirty years.

It is clear from the information contained in Record 2 that the individual has been dead for less than 30 years.

As far as Record 1 is concerned, the Ministry has disclosed the names of the parents of both the bride and groom, and the name of the clergyman who officiated at the marriage. The only remaining personal information relates to the bride and groom. The appellant points out that the marriage took place in 1917, and that the bride (who is the subject of the request) would be 102 years old if still alive today. The appellant provides no evidence that either the bride or groom is in fact dead or has been dead for more than 30 years, but argues that privacy interests of individuals may diminish over time even when they have been dead for less than 30 years.

In Order P-1232, Inquiry Officer Mumtaz Jiwan dealt with a similar appeal involving the same appellant. In that order, she made the following comments:

> In my view, given the records at issue and the particular circumstances of this appeal, it is permissible for me to make some assumptions, based on the evidence on the face of the records. These assumptions relate to the probable age of individuals and to the age beyond which a person would not reasonably be expected to live. Because privacy protection is a fundamental principle in the Act, it is appropriate to be conservative in making assumptions that would lead to disclosure of anything that could be personal information.

Applying this reasoning to Record 1, in my view, it is not uncommon for individuals to live into their 80s and 90s and, in the absence of evidence to the contrary, it is reasonable to assume that if the bride and groom identified in Record 1 are dead, they would not have been dead for more than 30 years. Therefore I find that the information relating to these two individuals is their personal information, and that section 2(2) does not apply.

Once it has been determined that a record contains personal information, section 21(1) of the Act prohibits the disclosure of this information, except in certain circumstances. Two of these circumstances are relevant to this appeal; sections 21(1)(e) and (f), which state:

> A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,
>
> (e) for a research purpose if,
>
> (i) the disclosure is consistent with the conditions or reasonable expectations of disclosure under which the personal information was provided, collected or obtained,
>
> (ii) the research purpose for which the disclosure is to be made cannot be reasonably accomplished unless

> the information is provided in individually identifiable form, and
>
> (iii) the person who is to receive the record has agreed to comply with the conditions relating to security and confidentiality prescribed by the regulations; or
>
> (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

Section 21(1)(e)

The appellant points out that, as a genealogist, he undertakes research which is necessary and essential for the purpose of locating and proving claims of next of kin who may be entitled to a deceased person's estate. In the appellant's view, this research is consistent with the reasonable expectations of disclosure under which the information was provided, collected or obtained under the VSA. The appellant also refers to Order P-1232, where Inquiry Officer Jiwan pointed out that he had not submitted a Form 1 agreement, as required in order for the Ministry to consider a research proposal. In the appellant's view, he has submitted a Form 1 for each of the present appeals, and he objects to the fact that the Ministry has been unwilling to consider them as research proposals.

The Ministry submits that the appellant's business activities do not constitute a "research purpose" under section 21(1)(e). The Ministry argues that research should be viewed as a general review or a study and not a specific inquiry into a specific set of facts, and that the appellant's purpose in seeking access is not to conduct a course of study or research, but rather to gather facts about a specific estate.
In Order P-666, former Assistant Commissioner Irwin Glasberg defined "research" as:

> ... the systemic investigation into and study of materials, sources, etc. in order to establish facts and reach new conclusions [and] ... an endeavour to discover new or to collate old facts etc. by the scientific study or by a course of critical investigation ...

I adopt this interpretation for the purposes of this appeal. I have carefully reviewed the records and the representations of both parties, and I accept the Ministry's position on this issue. In my view, the appellant has not established that the personal information being sought will be used for a research purpose as the term is defined above and commonly understood.

Because the exception to the section 21(1) mandatory exemption provided by section 21(1)(e) only applies to research purposes, it is not necessary for me to consider whether disclosure to the appellant is consistent with the conditions or reasonable expectations under which the personal information was provided, collected or obtained under the VSA.

Section 21(1)(f)

Sections 21(2), (3) and (4) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of personal privacy. Section 21(3) sets out cases in which disclosing personal information is presumed to be an unjustified invasion of personal privacy. If one of the presumptions applies, the Ministry 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 Ministry must consider the application of the factors in section 21(2), as well as all other circumstances that are relevant in the circumstances of the case.

The Ministry relies on the presumptions contained in sections 21(3)(a), (d) and (h) of the Act.

The appellant points out that he is not seeking the type of information listed in various parts of section 21(3), and submits that none of the circumstances favouring privacy protection in section 21(2) are present. The appellant does not address any of the considerations under section 21(2) which favour disclosure. In the appellant's view, disclosure of the contents of the records would serve to benefit individuals who would otherwise never know and never be able to prove their entitlement under an estate. Although not directly related to any of the section 21(2) considerations, I find that this is an unlisted factor favouring disclosure.

The only way a record containing personal information of individuals other than the appellant can be disclosed under section 21(1)(f) is if I find that disclosure would not constitute an unjustified invasion of the privacy of these individuals. Having considered the representations of both parties, in my view, the privacy protection interests inherent in section 21 are not outweighed by the factor favouring disclosure identified by the appellant. Accordingly, I find that disclosure of the remaining parts of Records 1 and 2 to the appellant would constitute an unjustified invasion of personal privacy under section 21(1) of the Act.

PUBLIC INTEREST IN DISCLOSURE

The appellant submits that there is a compelling public interest in disclosure of the records. He points to the 1993 Report of the Auditor General with respect to the Administration of Trusts and Estates by the Public Trustee of Ontario, and submits that it is in the public's interest for estates to be properly administered and distributed to rightful heirs.

The appellant made similar arguments in his previous appeal, which were rejected by Inquiry Officer Jiwan.

The Ministry submits that the appellant is advancing a private rather than a public interest. It states:

> The Requester has indicated that his reason for acquiring the records is to settle claims of intestate estates. In Ontario, there is a publicly-funded system in which intestate estates can be dealt with in accordance with the public interest and with little or no cost to the beneficiaries. The office of the Public Guardian and Trustee actively searches for heirs for intestate estates. This is the body of the

> provincial government which administers the public interest. The Requester is this case is asserting a private commercial interest.

Having reviewed both representations, I adopt the following findings of Inquiry Officer Jiwan in Order P-1232:

> I agree that the appellant is likely providing a useful service to many individuals who may otherwise not have known about their inheritances. I also agree that this private enterprise may result in reducing the workload and burden of the Office of the Public Guardian and Trustee. However, in my view, these factors are not sufficient to establish a compelling public interest in disclosure of the information at issue to the appellant, whose interest remains essentially private. Therefore, I find that section 23 is not applicable in the circumstances of this appeal.

ORDER:

I uphold the Ministry's decision.

Original signed by: November 25, 1997
Tom Mitchinson
Assistant Commissioner