



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-1736

Appeals PA-990087-1 and PA-990088-1

Public Guardian and Trustee



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/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

BACKGROUND:

The Public Guardian and Trustee (the PGT) deals with the estates of individuals who, while residents of Ontario, die testate or intestate without next-of-kin able or willing to administer their estates. The PGT becomes the court-appointed estate trustee and searches for beneficiaries or next-of-kin who could be heirs entitled to all or part of the assets of the estate. If lawful heirs cannot be found, the estate escheats to the Crown. Although no further interest is paid on the liquidated assets after the deceased has been dead for ten years, an individual can prove entitlement at any time and receive his or her lawful share.

Certain individuals and organizations are in the business of identifying and locating heirs of estates that have not been claimed or have escheated to the Crown (heir tracers). They do so, in part, by seeking information held by the PGT.

NATURE OF THE APPEAL:

The PGT received two requests under the Freedom of Information and Protection of Privacy Act (the Act) from an heir tracer for access to a list of all estates being administered by the PGT which came to its attention between September 1, 1996 and October 31, 1997 (first request) and November 1, 1997 and July 31, 1998 (second request). In his requests, the heir tracer explained that the lists should contain the same information supplied to the court when making an Application for Certificate of Appointment of Estate Trustee without a Will.

In responding to the heir tracer, the PGT created a sample record responsive to each of the two requests. In its decisions, the PGT explained that the sample records contain the requested categories of information for several estates administered by the PGT whose files were opened during the period specified in the requests. The PGT denied access to the information responsive to both requests on the basis of section 21(1) of the Act, the exemption for personal information. In particular, the PGT cited the presumption of an unjustified invasion of privacy at section 21(3)(f) (individual's finances).

In its decision, the PGT also explained that since access to the information has been denied in full, no fees are being charged under section 57 of the Act. The PGT went on to explain, however, that should it be ordered to disclose such information by this office, it reserves the right to charge fees in that regard.

The heir tracer, now the appellant, appealed the PGT's decisions to this office.

During the mediation stage of the appeals, the appellant raised the possible application of the "public interest override" at section 23 of the Act.

I sent a Notice of Inquiry setting out the issues in these appeals to the PGT and the appellant. I received representations from both parties.

RECORDS:

The sample records prepared by the PGT consist of two charts, each of which contains information relating to four estates administered by the PGT. This information is organized under the following 11 headings:

- Client Account Number;
- Client Name;
- Client Address;
- Last Occupation;
- Place of Death;
- Date of Death;
- Value of Personal Property;
- Value of Real Property;
- Total Value of Estate;
- Inheritors; and
- Setup Date.

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 any identifying number assigned to the individual and 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 appellant submits that the Client Address information meets the definition of personal information under paragraph (d) of the section 2(1) definition, but that the remaining categories of information “do not specifically fall under the categories of information defined under section 2(1) or under section 21(3).” The appellant also submits that the “information requested relating to the value of the assets of the individual would fall under the presumption [of an unjustified invasion of personal privacy] under section 21(3)(f).” The appellant appears to be referring to the Value of Personal Property, Value of Real Property and Total Value of Estate information.

The PGT submits generally that all of the information in the records qualifies as “personal information.”

I agree with the PGT and the appellant that the Client Address, Value of Personal Property, Value of Real Property and Total Value of Estate information, together with the Client Name, meet the definition of “personal information” in section 2(1). The Client Address information falls within paragraph (d), while the latter three categories of information are clearly “about” the client, in that they reveal information about the individual’s finances [Order P-1187].

The Client Account Number is personal information under paragraph (c) of the section 2(1) definition (Order P-1187). The Last Occupation, Place of Death and Date of Death also qualifies as personal information, since together with the client’s name it reveals information “about” the individual, in particular information about the individual’s occupation and details surrounding the person’s death. The Setup Date, together with the client’s name, reveal that an estate was being dealt with by the PGT, which is information “about” the individual. Finally, the Names of Inheritors, together with the client’s name, reveal at least some degree of relationship between the deceased individual and the inheritor, and thus qualifies as personal information of the client and the inheritor.

As a result, I find that all of the information in the records qualifies as personal information under the definition of that term in section 2(1) of the Act, subject to any finding I may make under section 2(2). That section reads:

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

The PGT submits:

... [The deceased individuals] would all have been dead for less than thirty years. In fact, most would have died fairly recently ... The [PGT] has rarely if ever dealt with an estate where a deceased individual has been dead for more than thirty years ...

In the circumstances, I am satisfied that the records do not contain information about individuals who have been deceased for more than thirty years, and therefore section 2(2) does not apply to exclude the information in the records from the definition of personal information in section 2(1) of the Act.

INVASION OF PRIVACY

Introduction

Where a requester seeks personal information of other individuals, section 21(1) of the Act prohibits an institution from disclosing this information unless disclosure would not constitute an unjustified invasion of the personal privacy of these individuals.

In this situation, sections 21(2) and (3) of the Act provide guidance 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. Section 21(2) provides some criteria for the institution to consider in making this determination. Section 21(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy. Section 21(4) refers to certain types of information the disclosure of which does not constitute an unjustified invasion of personal privacy. The Divisional Court has stated that once a presumption against disclosure has been established, it cannot be rebutted by either one or a combination of the factors set out in 21(2) [John Doe v. Ontario (Information and Privacy Commissioner) (1993), 13 O.R. (3d) 767].

Section 21(1)(c) - public record

The appellant submits that the information at issue is not exempt due to the application of the exception at section 21(1)(c) which reads:

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

personal information collected and maintained specifically for the purpose of creating a record available to the general public;

The appellant states:

The regular practice of the PGT for more than twenty years has been to apply to the Court for Letters of Administration (now Certificates of Appointment of Estate Trustee without a will) which information has been a matter of public record. All of the information set out in the request has been available to the public uniformly over the years when the PGT assumes administration of an estate and it has only been in the past three years the PGT has abandoned its practice of applying for Letters of Administration when it assumes the administration of an estate ...

.

... In this appeal [in contrast to Order P-1187] the request is for the particulars of estates being administered by the PGT, which information had hitherto uniformly been made public

[IPC Order PO-1736/December 1, 1999]

by regular practice by the PGT applying to Ontario Court for Letters of Administration which records were public.

The PGT submits:

In the case of the estate of a deceased individual being dealt with and administered by the [PGT], a file is opened in the first instance. This would constitute the record, although, as observed earlier, in this particular Inquiry, the record is actually two sample charts giving details of certain representative Crown Estate files.

A file opened and maintained by the [PGT] is not for the purpose of creating a record available to the general public. It consists of documents belonging to the deceased individual wherever found in the course of extensive investigations and other documents generated by the estates officers and their correspondents in various governmental and private sector areas in the course of administering the estate, which includes a thorough search for possible next-of-kin both in Ontario and elsewhere.

Generally speaking, personal information is not collected by the [PGT] for the purpose of creating a record available to the general public, but, in the case of estates of deceased individuals, for the purposes of administering those estates and distributing their net assets, if any, in the most efficient and economical manner to those lawfully entitled to those assets.

This type of record is to be contrasted with those, for example, maintained by a land registry office where, for a fee, anyone can obtain photocopies of instruments registered under the [Land Titles Act] or the [Registry Act] or even look at the registered originals. The record in the [PGT] is also to be contrasted with that maintained by the ... Ministry of Consumer and Commercial Relations which provides public offices and allows access to birth, marriage and death records collected and administered under the [Vital Statistics Act] subject to certain restrictions imposed, presumably in the interest of safeguarding certain personal information.

Section 18 of the [Public Guardian and Trustee Act (PGTA)] provides:

Every person employed in the performance of the duties imposed upon the Public Guardian and Trustee by this or any other Act or by the Lieutenant Governor in Council shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of such employment and shall not communicate any such matters to any person other than to a person legally entitled thereto or to the person's legal counsel except as may be required in connection with the administration of this Act and the regulations under this Act or any proceedings thereunder.

In previous orders this office has stated that in order to satisfy the requirements of section 21(1)(c), the [**IPC Order PO-1736/December 1, 1999**]

information must have been collected and maintained specifically for the purpose of creating a record available to the general public (for example, Order P-318). Section 21(1)(c) has been found to be applicable where, for example, a person files a form with an institution as required by a statute, and where that statute provides any member of the public with an express right of access to the form (Order P-318, regarding a Form 1 under the Corporations Information Act). On the other hand, this office has found that where information in a record may be available to the public from a source other than the institution receiving the request, and the requested information is not maintained specifically for the purpose of creating a record available to the general public, section 21(1)(c) does not apply. For example, in Order M-170, former Commissioner Tom Wright stated the following with respect to records in the custody of a police force:

The various witness statements and the officer's statement were prepared and obtained as part of a police investigation into a possible violation of law. In my view, the specific purpose for the collection of the personal information was to assist the Police in determining whether a violation of law had occurred and, if so, to assist them in identifying and apprehending a suspect. The records are not currently maintained in a publicly available form, and it is my view that section 14(1)(c) [the municipal equivalent to section 21(1)(c) of the Act] does not apply.

Similarly, in Order M-527, Adjudicator Holly Big Canoe stated:

In my view, while some of the same personal information may be available elsewhere, the specific purpose for collecting and maintaining this personal information was to investigate the accident, not to create a record available to the general public, and section 14(1)(c) does not apply.

I accept that information of the nature requested has been available in cases where the PGT files with the Superior Court of Justice an Application for Certificate of Appointment of Estate Trustee without a Will (Form 74.5) under Rule 74 of the Rules of Civil Procedure. In certain circumstances, the Rules of Civil Procedure require that applicants such as the PGT file this information with the court, which information is then available to the public by virtue of section 137(1) of the Courts of Justice Act, unless the court orders otherwise pursuant to section 137(2). In my view, disclosure of information of the nature requested in some cases in this way is not sufficient to meet the threshold under section 21(1)(c). First, the PGT itself does not make this information available to public directly; this disclosure is made by the courts. Second, the PGT is under no statutory requirement to make the requested information available to the public directly, under the PGTA or under any other legislation. In fact, as the PGT points out, the PGT under section 18 of the PGTA has a duty not to disclose information of the type requested, unless one of the exceptions in that provision applies. (Pursuant to section 67(1) of the Act, the disclosure provisions in the Act prevail over the confidentiality provision in section 18 of the PGTA. Therefore, in the event that I find any of the requested information not to be exempt under section 21 of the Act, it must be disclosed, despite section 18 of the PGTA).

On the basis of the above, I conclude that the requested information is not collected or maintained specifically for the purpose of creating a record available to the general public under section 21(1)(c) of the Act.

Section 21(1)(f) - unjustified invasion of personal privacy

Presumption at section 21(3)(f)

The PGT has cited the presumption of an unjustified invasion of privacy at 21(3)(f) which reads:

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

describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;

The PGT submits:

... if the information sought by the appellant were released, information which describes an individual's finances, income, liabilities, net worth, bank balances, financial history or activities, or creditworthiness would be disclosed, thus constituting a presumed unjustified invasion of personal privacy as set out in clause 21(3)(f) of the Act ... [T]he record requested would at least describe each individual's net worth, assets and, perhaps more indirectly, finances.

.

... Thus, it was unnecessary for the [PGT] to have considered the application of the factors listed in subsection 21(2) because of the clear presumption mentioned in clause 21(3)(f), which ... applies in this instance ...

.

Release of a client's name, along with the value of that client's personal property, real property or total estate ... is clearly contrary to subsection 21(1) of the Act as it constitutes a presumed unjustified invasion of privacy under clause 21(3)(f).

In Order 71, former Commissioner Sidney B. Linden ordered the release of "the list of names of estates, administered by the [PGT] from which funds have been transferred to the Consolidated Revenue Fund ..." In Order P-1187, Inquiry Officer Donald Hale found that while disclosure of estate names alone would not constitute an unjustified invasion of the personal privacy of the deceased individuals following Order 71, disclosure of the dollar value of the estates would result in a presumed unjustified invasion under clause 21(3)(f). It is clear that a release of these two pieces of personal information combined for each estate was held to be prohibited by clause 21(1)(f) by reason of the provisions found in clause 21(3)(f) of the Act.

The appellant submits:

The only information that is being requested that falls within the presumption of unjustified invasion of personal privacy set out in section 21(3) is the request for information relating to the estimated value of assets of the deceased individual. This would apparently fall under section 21(3)(f).

.

The Appellant is not seeking information relating to income, liabilities, net worth, bank balances, financial history or activities or creditworthiness. The Appellant is requesting basic information identifying the estimated value of the assets being administered by the PGT. The Appellant is not seeking precise details of those assets but only the estimated value of the total assets.

The Appellant's position is that by practice the PGT has waived an argument that disclosure of personal information relating to the value of assets might constitute [an] unjustified invasion of personal privacy. For more than twenty years every estate which the PGT undertook to administer was preceded by the filing of an application with the Court for Letters of Administration. The current practice is not necessary to file such application or to delay the filing of such application.

Attached as Appendix 5 hereto are applications for Certificate of Appointment of Estate Trustee without a Will for ... [six named individuals] all of which have been filed with the Court.

... the information set out in the Applications for Estate Trustee without a Will filed with the Court is a matter of public record, indicates estates being administered by the PGT and that such information can not seriously be considered an unjustified invasion of personal privacy. Accordingly ... [the PGT] is estopped from arguing that such information is an unjustified invasion of personal privacy. If the PGT can and has released such information in estates which it is administering, then the information being requested can not genuinely be considered an invasion of privacy and there is no reason that the information being requested can not be released.

More particularly all of the six applications which are referred to herein and which are set out at Appendix 5 are part of the group of the estates for which a request for information was made and refused by the [PGT]. All six estates are between the periods September 1, 1996 and October 31, 1997 and the second period requested from November 1, 1997 to July 31, 1998. Applications for Letters of Administration have been filed in these estates, the information is public and the [PGT] can not make an argument that such information is an unjustified invasion of [personal] privacy.

Of the six estates referred to herein, which are referred to by way of example, the Appellant has successfully located beneficiaries who were entitled to the estates:

The Estate of [named individual]: The Appellant located a niece who had not been located by the PGT.

The Estate of [named individual]: The PGT had located one heir. The Appellant located more than 20 heirs after the information had been made public.

The Estate of [named individual]: The Appellant located two heirs to the estate.

The information was therefore of benefit and of value to the heirs who were entitled to the estate and who may have otherwise never known that they were entitled if the information had not been made public. There is not only no logical consistency in an assertion that the information requested from the PGT specifically a list of the estates being administered by the PGT and other basic information is an unjustified invasion of personal privacy, but there is absolutely no justification for withholding such information.

In my view, the Client Names, together with the Value of Personal Property, Value of Real Property, and Total Value of Estate information clearly meet the section 21(3)(f) presumption of an unjustified invasion of personal privacy. I do not accept the appellant's submission that disclosure of the total value of assets can be distinguished from the precise details of the assets, or the appellant's suggestion that an estimate can be distinguished from a precise figure. The fact that section 21(3)(f) applies to an individual's "net worth" means that a total figure, without a detailed breakdown, can qualify for this presumption. Further, in the absence of any evidence to indicate that the figures would be substantially inaccurate, there is no basis for a finding that the amounts do not "describe" these individuals' finances, assets, or net worth. Information need not be absolutely precise or accurate in order to qualify for the section 21(3)(f) presumption [Order M-1154]. I note also that the appellant's submissions on this point conflict with his later submission under section 21(2) that "[i]t is not anticipated that the information would be inaccurate or unreliable." This finding is consistent with earlier orders of this office in a similar context [Orders 71, P-1187].

The appellant takes the position that by its conduct the PGT has "waived" an argument that the section 21(3)(f) presumption applies. In support of this argument, the appellant relies on his submissions respecting the public availability of the information via the courts. I do not accept the appellant's submission.

First, section 21(1) is a mandatory exemption designed to protect the privacy interests of individuals, not institutions. Since the Legislature made this exemption mandatory, and did not give institutions any discretion in whether or not to apply it (as is the case with other exemptions), an institution can never waive its application by its conduct or in any other manner. Second, the fact that the court may make information of the nature requested available to the public does not mean that it cannot be exempt from disclosure pursuant to a request under the Act. In Order M-68, Assistant Commissioner Tom Mitchinson stated the
[IPC Order PO-1736/December 1, 1999]

following in the context of a request for information regarding the existence of criminal records for four named individuals:

In reaching this decision [that the information is exempt under the personal privacy exemption], I am aware of the fact that the existence of a particular criminal conviction is a matter of public record, and that this fact would have been disclosed to the public during a trial or plea taken in open court. However, in my view, it does not necessarily follow that this information should be freely and routinely available to anyone who asks.

Commissioner Tom Wright, considered this issue in Order 180. Although that appeal involved a request for a list of the names of lottery winners, I feel that some of his comments are equally applicable to the request made in this appeal. At page 11 of Order 180, Commissioner Wright stated:

... In the recent decision in United States Department of Justice, et al., v. Reporters' Committee for Freedom of the Press et al. 109 S.Ct. 1468 (1989), the Supreme Court of the United States considered the question of access to criminal identification records or "rap sheets" which contain descriptive information as well as history of arrest, charges, convictions and incarcerations. Much of the rap sheet information is a matter of public record. ... In considering whether or not the disclosure of the rap sheet would constitute an "unwarranted invasion" of the subject of the sheet, Justice Stevens, speaking for the majority, made the following statements which I feel are relevant to the issues that arise in this appeal. At page 1476, Justice Stevens stated that:

To begin with, both the common law and the literal understandings of privacy encompass the individual's control of information concerning his or her person. In an organized society, there are few facts that are not at one time or another divulged to another. Thus the extent of the protection accorded a privacy right at common law rested in part on the degree of dissemination of the allegedly private fact and the extent to which the passage of time rendered it private.

Further, at page 1477, Justice Stevens stated:

But the issue here is whether the compilation of otherwise hard-to-obtain information alters the privacy interest implicated by disclosure of that information. Plainly there is a vast difference between the public records that might

be found after a diligent search of courthouse files, county archives and local police stations throughout the country and a computerized summary located in a single clearing house of information.

Finally, at page 1480, Justice Stevens referred to an earlier decision of the Supreme Court in Whalen v. Roe 97 S.Ct 869 at page 872 where the Court stated:

In sum, the fact that 'an event is not wholly private' does not mean that an individual has no interest in limiting disclosure or dissemination of the information.

Although this appeal does not involve criminal record information, I find that the principles discussed above apply here. On this basis, I find that the possible public availability of financial information about deceased individuals the appellant seeks does not negate the application of the personal privacy exemption at section 21(1), and in particular the presumption at section 21(3)(f).

Accordingly, I find that the Client Names, together with the Value of Personal Property, Value of Real Property, and Total Value of Estate information meet the section 21(3)(f) presumption of an unjustified invasion of personal privacy, and therefore this information is exempt under section 21(1) of the Act. However, I find that the Client Names alone do not qualify for the section 21(3)(f) presumption since this information does not describe the individuals' finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness.

No other presumptions under section 21(3) have been claimed by the PGT, and I find that apart from section 21(3)(f) none is applicable. As a result, I must determine whether disclosure of the remaining information at issue (Client Name, Client Account Number, Client Address, Last Occupation, Place of Death, Date of Death, Inheritors and Setup Date information) would constitute an unjustified invasion of personal privacy, based on the listed factors in section 21(2) and any unlisted factors.

Section 21(2) factors

Introduction

The PGT cites no factors under section 21(2) weighing against disclosure of the information at issue. The appellant relies on the factor weighing in favour of disclosure at paragraph (a), and also submits that the factors weighing against disclosure at paragraphs (e), (f), (g), (h) and (i) do not apply. Those sections read:

A head, in determining whether disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

- (a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny;
- (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
- (f) the personal information is highly sensitive;
- (g) the personal information is unlikely to be accurate or reliable;
- (h) the personal information has been supplied by the individual to whom the information relates in confidence; and
- (i) the disclosure may unfairly damage the reputation of any person referred to in the record.

I will consider the applicability of each of these factors, as well as any other unlisted factors which may be relevant.

Section 21(2)(a) - public scrutiny

The appellant submits:

The PGT is a government department which is empowered to administer estates of individuals who die intestate under the Crown Administration of Estates Act ... The Auditor General's Report from 1993 ... sets out concerns about the administration by this office. To the extent that the entitlement of individuals who would be heirs to the estates pursuant to the Succession Law Reform Act can be ascertained and made available through a public record as had been previously the regular and uniformed practice, this would be desirable to ensure that there is accountability and scrutiny of the government department which has assumed responsibility for administering intestate estates.

In Order PO-1717, Assistant Commissioner Mitchinson stated the following in the context of a request to the PGT by an heir tracer for information about a particular estate:

The appellant carries on the business of heir tracing, and has made this request in the ordinary course of his business activity. The appellant's representations on this issue do not persuade me that a public scrutiny concern exists, nor how disclosure of the particular record at issue in this appeal is desirable for the purpose of subjecting the [PGT] to public scrutiny. Accordingly, I find that section 21(2)(a) is not a relevant consideration.

In my view, the Assistant Commissioner's findings are applicable in the circumstances of this case. The appellant here is in a similar position to the appellant in Order PO-1717, and the appellant's representations do not satisfy me that disclosure of this information would advance any interest in subjecting the PGT to public scrutiny. As a result, I find that the section 21(2)(a) factor does not apply here.

Section 21(2)(e) - pecuniary or other harm

The appellant submits that the individuals about whom the information is requested will not be exposed to pecuniary or other harm because they are deceased. Based on the material before me I accept that this factor is not applicable to the information remaining at issue, either with respect to the deceased individuals or the listed inheritors.

Section 21(2)(f) - highly sensitive

The appellant argues that the information at issue is not highly sensitive since it had previously been made available by the court. This office has stated in previous orders that for information to be considered highly sensitive, it must be found that disclosure of the information could reasonably be expected to cause excessive personal distress to the subject individual [Orders M-1053, P-1681]. This factor has been found to apply, for example, to information about professional misconduct [Order M-1053] and in circumstances involving allegations of workplace harassment [Order P-685]. In my view, based on the material before me, it cannot be said that disclosure of the information remaining at issue could reasonably be expected to cause excessive personal distress to the subject individuals. While there may be some degree of sensitivity to this information, it is not comparable in sensitivity to the types of information that have been found to meet the section 21(2)(f) threshold. As a result, I find that this factor does not apply here.

Section 21(2)(g) - unlikely to be accurate or reliable

The appellant submits simply that "[i]t is not anticipated that this information would be inaccurate or unreliable." In the circumstances, there is no evidentiary basis for a finding that the information remaining at issue is unlikely to be accurate or reliable, and therefore this factor does not apply.

Section 21(2)(h) - supplied in confidence

The appellant states that "[t]he deceased person did not supply the information to the PGT. The PGT obtained the information through the course of that office assuming the administration of the estate." I agree that the information at issue was not supplied to the PGT by the deceased individuals or by the inheritors. In addition, in the circumstances, there is no basis for a finding that it was supplied in confidence by any individual. As a result, I find that this factor does not apply.

Section 21(2)(i) - unfair damage to reputation

The appellant submits that the information at issue is "basic information about the deceased individual. The deceased individual does not have a reputation and in any event the information being requested is not

contentious or controversial in nature and would not damage unfairly the reputation of the deceased person.” In my view, it cannot be said that a deceased individual does not have a reputation. Nevertheless, I find that the information at issue is not the type of information which would attract the application of this factor. This information cannot be compared with information to which this factor has been found to apply, such as the names of witnesses and suspects in the context of a criminal investigation [Order M-1093].

Unlisted factor - diminished privacy interest after death

In Order PO-1717, the Assistant Commissioner stated:

I agree with the statement made by former Commissioner Tom Wright in Order M-50, that:

Although the personal information of a deceased individual remains that person's personal information until thirty years after his/her death, in my view, upon the death of an individual, the privacy interest associated with the personal information of the deceased individual diminishes. The disclosure of personal information which might have constituted an unjustified invasion of personal privacy while a person was alive, may, in certain circumstances, not constitute an unjustified invasion of personal privacy if the person is deceased.

A decision to consider this factor, and the assessment of the weight to be given to it in a particular appeal, must be made in the context of section 2(2).

In that section, the legislature makes it clear that information about an individual remains his or her personal information until thirty years after death, signalling a strong intention to protect the privacy rights of deceased persons.

I agree with the Commissioner's and Assistant Commissioner's statements and find they are applicable here. I find that the privacy interests of the deceased individuals are moderately reduced, but not eliminated, in these circumstances.

Unlisted factor - benefit to unknown heirs

The appellant submits:

The Appellant is a genealogist who locates and represents heirs to unclaimed assets and estates being administered by the [PGT]. Over the course of the past thirty-seven years, the Appellant has successfully established claims of at least three thousand individuals who might otherwise never have known that they were entitled to the unclaimed assets or who might never have been able to prove their entitlement. As such the Appellant has resolved

[IPC Order PO-1736/December 1, 1999]

estate claims for these individuals and has provided an extremely valuable service to ... a large number of members of the public.

In Order PO-1717, the Assistant Commissioner stated:

The appellant identifies another unlisted factor. He submits that disclosure of the requested information pertaining to the deceased's estate will help unknown heirs recover funds that they would otherwise be unlikely to receive. I considered this factor in Order P-1493, involving a request by an heir tracer to the Ministry of Consumer and Commercial Relations for access to marriage and death records. In Order P-1493 I stated:

In the appellant's view, disclosure 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.

Similarly, I find that this unlisted factor is a relevant consideration in the present appeal.

I agree with the approach taken by the Assistant Commissioner in the order referred to above, and similarly find that the potential for disclosure of the information at issue to lead to individuals proving their entitlement to assets of estates which they may not have been able to otherwise is a significant factor favouring disclosure.

This factor applies to varying degrees to the eight remaining categories of information. The appellant has provided me with representations on the extent to which these types of information are useful in his efforts to locate heirs. The appellant explains that the Client Name and Date of Death are absolutely necessary for him to carry out his task, since without this information he cannot be sure of the identity of the deceased. He further submits that the Client Address, Last Occupation and Place of Death are very important to determine or confirm the identity of the deceased, especially where the deceased's name is relatively common. The appellant states that the Inheritors' names can be useful in some circumstances, but that generally speaking this information does not assist him. Finally, the appellant states that the Client Account Number and Setup Date information are of no use to him.

In the circumstances, I find that this unlisted factor applies to a high degree to the Client Name and Date of Death, and to a moderate to high degree to the Client Address, Last Occupation and Place of Death information. I further find that this factor applies to a low degree to the Inheritors' names, but does not apply at all to the Client Account Number and Setup Date information.

Analysis of factors

I found above that none of the listed section 21(2) factors on which the appellant made submissions is applicable here. I also find that none of the remaining listed factors applies. The only factors that apply in the circumstances are the “diminished privacy interest after death” and “benefit to unknown heirs” factors.

On the one hand, it is clear that disclosure of the personal information remaining at issue would constitute an invasion of personal privacy of both the deceased individuals and the inheritors, to varying degrees, depending on the particular information. In the case of the Client Name alone, I find that the privacy interest inherent in this information is low in the circumstances. This finding is consistent with previous orders of this office in similar circumstances [Orders 71, P-1187, PO-1717]. Similarly, I find that the privacy interest inherent in the Client Account Number and Setup Date information to be low, since it is primarily administrative in nature, and would reveal little more than the fact that the deceased individual’s estate was being administered by the PGT. This conclusion is strengthened by the “diminished privacy interest after death” factor. I further find that disclosure of the Client Address, Last Occupation, Place of Death and Date of Death would constitute a moderate invasion of the privacy of the deceased individuals, in light of the “diminished privacy interest after death” factor. While disclosure of this information would reveal more “about” the subject individuals, beyond merely administrative information, it is not as inherently sensitive as it might be were the individuals alive. Finally, I find that disclosure of the names of the Inheritors would invade the privacy of those individuals to a moderate to high degree. This information reveals that the inheritors had at least some degree of relationship to the deceased, and that they may be entitled to share in the assets of the estate. Disclosure also would reveal information about the deceased, although given the “diminished privacy interest after death” factor, I find that the inherent privacy interest in this information respecting the deceased is low.

On the other hand, I found above that the potential for disclosure of the information at issue to lead to individuals proving their entitlement to assets of estates which they may not have been able to otherwise is a significant factor favouring disclosure. In the case of Client Name and Date of Death, I find that the factor favouring disclosure clearly outweighs the relatively low privacy interest inherent in this information. The factor favouring disclosure also outweighs the privacy interest in the Client Address, Last Occupation and Place of Death information. The factor favouring disclosure does not outweigh the privacy interest inherent in the Inheritors’ names. Finally, since the factor favouring disclosure does not apply at all to the Client Account Number and Setup Date, this information is exempt under section 21(1).

To conclude, I find that disclosure of the Client Name, Client Address, Last Occupation, Place of Death and Date of Death would not constitute an unjustified invasion of personal privacy within the meaning of section 21(1)(f), and this information is therefore not exempt under section 21(1). Disclosure of the remaining information (Inheritors’ names, Client Account Number and Setup Date) does not qualify for the section 21(1)(f) exception, and this information is therefore exempt under section 21 of the Act.

PUBLIC INTEREST IN DISCLOSURE

Section 23 of the Act reads:

An exemption from disclosure of a record under sections 13, 15, 17, 18, 20 and **21** does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption [emphasis added].

In order for the section 23 “public interest override” to apply, two requirements must be met: there must be a compelling public interest in disclosure; and this compelling public interest must clearly outweigh the purpose of the exemption [Order P-1398, upheld on judicial review in Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner), [1999] O.J. No. 484 (C.A.)].

If a compelling public interest is established, it must then be balanced against the purpose of any exemptions which have been found to apply. Section 23 recognizes that each of the exemptions listed, while serving to protect valid interests, must yield on occasion to the public interest in access to information which has been requested. An important consideration in this balance is the extent to which denying access to the information is consistent with the purpose of the exemption [Order P-1398, cited above].

The appellant submits that there is a public interest in helping individuals make a claim to an estate which they may never have known about had the appellant and persons in a similar business not been able to obtain access to information about the estates. The appellant states that disclosure would be consistent with the public policy inherent in the Succession Law Reform Act, which is to ensure the operation of a scheme of distribution of assets of a person who dies intestate. The appellant submits that his requests go to “the heart of the role of government which is funded by taxpayers’ money” and that it is not in the public interest for a government body to withhold information to the detriment of members of the public.

The appellant goes on to cite the 1993 Report of the Auditor General respecting the PGT, and states that this report recognizes the significant impact the PGT’s operations have on the public. The appellant states:

... it is in the public interest that a government department which is empowered to administer estates and is funded by public taxpayer money be properly administered and ensure that the information which would enable the legislative scheme for distribution not be frustrated.

The Report also cites the [PGT] in a conflict of interest situation because the assets of an estate become payable to the Province after 10 years from the date of death and notes that over the past 20 years, the office has paid about 18 million to the Province from undistributed assets.

The Report ... recognizes that the administration of the [PGT], the manner in which it administers estates, the conflict of interest in a government department administering such estates because the assets of an estate become payable to the Province after 10 years from the date of death are matters of public concern [emphasis in original].

The appellant further submits that section 1 of the Act, which sets out the statute’s purposes, supports a compelling public interest in disclosure. The appellant cites the PGT’s former practice of applying to the [IPC Order PO-1736/December 1, 1999]

court for Letters of Administration, and the ability of the public to access this information in the past through the court. The appellant states:

... To deny and withhold the information requested totally ignores the public purpose of the [Act] which is to provide a right of access, that information should be available to the public and that necessary exemptions from the right of access be limited and specific [emphasis in original].

Finally, the appellant submits that there is a compelling interest that persons “not be treated arbitrarily which includes the reversal of a pre-existing practice over the course of more than twenty years ...”

Since I found that some of the requested information is not exempt, section 23 is relevant only to the remaining information to which section 21 was found to apply, the Inheritors' names, Client Account Number and Setup Date.

In my view, the appellant's arguments have some persuasive value to the extent that they would apply to a finding that all of the requested information is exempt under section 21. I agree that withholding all of this information might unduly frustrate the public interest in locating heirs and ensuring that the underlying policy of the Succession Law Reform Act in distributing assets of individuals who die intestate is met. However, as I found above, the value of disclosure of the Inheritors' names, Client Account Number and Setup Date is either low or non-existent, and as such there is no compelling public interest in disclosure of this particular information. In addition, the value of disclosure of the financial information also is not sufficiently high to establish a compelling public interest in disclosure. The appellant has indicated that of the three types of financial information, only the Total Value of Estate information is useful to him, and thus there clearly is no compelling public interest in disclosure of the Value of Real Property and Value of Personal Property. Regarding the Total Value information, the appellant states that this is useful for the purpose of determining which estates have sufficient value to justify making efforts to locate heirs. This factor relates primarily to the appellant's private business interest, and is not sufficient to establish a compelling public interest. As a result, the appellant has failed to establish a compelling public interest in disclosure of the information I have found to be exempt under section 21 of the Act.

ORDER

1. I order the PGT to disclose to the appellant the Client Name, Client Address, Last Occupation, Place of Death and Date of Death information on the responsive records no later than **January 6, 2000**.
2. I uphold the PGT's decision to withhold the remaining information.
3. In order to verify compliance with provision 1, I reserve the right to require the PGT to provide me with a copy of the material sent to the appellant.

Original signed by: _____

_____ December 1, 1999

David Goodis
Senior Adjudicator