



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

## **ORDER PO-1886**

Appeals PA\_000183\_1 and PA\_000188\_1

Ministry of Consumer and Business Services



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## **NATURE OF THE APPEAL:**

The Ministry of Consumer and Business Services (formerly the Ministry of Consumer and Commercial Relations) (the Ministry) received two separate requests under the *Freedom of Information and Protection of Privacy Act* (the *Act*), from the same requester, for access to photocopies of the death certificates of two different named individuals. The requester states that he is “engaged in assisting with the administration of estates where the beneficiaries are unknown or cannot be located by the Office of the Public Guardian and Trustee.” The company he represents also provides genealogical research services for individuals and families.

One responsive record was identified for each request, and the Ministry provided partial access to the two records. The undisclosed information in both cases was denied on the basis that disclosure would constitute an unjustified invasion of the privacy of certain individuals identified in the records (section 21(1)).

The requester (now the appellant) appealed both decisions. The only portions of the records subject to appeal are the sections containing information about the parents of the individuals identified in the requests.

Mediation of these appeals was not successful, so they proceeded to the adjudication stage. I sent an initial Notice of Inquiry to the Ministry, and received representations in response. I then sent a copy of the Notice to the appellant, along with the non-confidential portions of the Ministry’s representations. The appellant also provided representations, which I shared with the Ministry, and received additional representations from the Ministry in reply.

## **RECORDS:**

The record in Appeal PA-000183-1 (appeal #1) is the Statement of Death form of the individual identified by the appellant. The portions of this form remaining at issue are the names and places of birth of the parents of the identified individual.

The record in Appeal PA-000188-1 (appeal #2) is the Certificate of Registration of Death form of the individual identified by the appellant. The portions of this form which remain at issue are the same as the other appeal: the names and places of birth of the parents of the deceased individual.

In its representations, the Ministry notes that one word contained in item 15 of the responsive record in appeal #1 does not constitute personal information and can be disclosed. I will include a provision to that effect in this order.

## **DISCUSSION:**

### **PERSONAL INFORMATION**

The section 21(1) personal privacy exemption applies only to information which qualifies as personal information. "Personal information" is defined in section 2(1) of the *Act* as recorded information about an identifiable individual, including information relating to race, national or ethnic origin [paragraph (a)], 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 [paragraph (h)].

The information at issue in these appeals consists of the names and country of birth of the parents of the two deceased individuals. I find that this clearly constitutes the personal information of the parents, as described in paragraphs (a) and (h) of definition of "personal information" in section 2(1) of the *Act*, subject to the limitation set out in section 2(2) below.

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.

Accordingly, if it can be established that the parents of the two deceased individuals have themselves been dead for more than 30 years, the information concerning them that appears in the records would not constitute their personal information.

The record in appeal #1 concerns an individual who died in 1968 at the age of 64. She was born in 1904. The corresponding record in appeal #2 concerns a woman who was born in 1908 and died in 1941 at the age of 33.

The Ministry submits:

The [Ministry] has been guided by and submits that the "125 year rule" articulated in Order P-1232 is applicable to the severed information at issue in these appeals. [The Adjudicator in that appeal] found that, "in this day and age, it is not uncommon for an individual to live to 95 ... further, even if I were to accept the appellant's argument that the individual is dead, she would have to have been dead for more than 30 years in order for section 2(2) to apply".

There is no evidence to confirm that 125 years have passed since the parents of [the named individual in appeal #1] were born. If one assumes, conservatively, that they were 16 years of age at the time of her birth in 1904, that would place their birth as 1888. If one then assumes that they lived to the age of 95, that would place their year of death as 1983. They would now be deceased for only 17 years, and not 30 years as required in order for section 2(2) of the *Act* to apply. If, less conservatively, one assumes that the parents were 25 years of age at the time of her birth in 1904, that would place the year of their birth as 1879. If one then assumes that they lived to the age of 95, that would place their year of death as 1974. They would now be deceased for only 26 years, and not 30 years as required in order for section 2(2) of the *Act* to apply.

There is no evidence to confirm that 125 years have passed since the parents of [the named individual in appeal #2] were born. If one assumes, conservatively,

that they were 16 years of age at the time of her birth in 1908, that would place their year of birth as 1892. If one then assumes that they lived to the age of 95, that would place their year of death as 1987. They would now be deceased for only 13 years, and not the 30 years as required in order for section 2(2) of the *Act* to apply. If, less conservatively, one assumes that her parents were 25 years of age at the time of her birth in 1908, that would place their year of birth as 1883. If one then assumes that they lived to the age of 95, that would place their year of death as 1978. They would now be deceased for only 22 years, and not the 30 years as required in order for section 2(2) of the *Act* to apply.

The appellant, on the other hand, argues the following:

Furthermore, with respect to our files ..., the deceased was born in 1903 [*this year has been incorrectly identified by the appellant - it should be 1908*] and 1904 respectively. From this we can induce that her parents were likely born between 1860 and 1885. Given their life expectancy at this time (as per the enclosed printout courtesy of Statistics Canada) we can see that the parents of the deceased had a life expectancy of approximately 71 years of age. This would further suggest, in the absence of any evidence to the contrary, that the parents of the deceased have in all probability been deceased for more than 30 years. Given that "... privacy diminishes upon death ..." and in lieu of any evidence to the contrary, it would appear reasonable to allow access to such information.

In Order P-1232, former Adjudicator Mumtaz Jiwan also dealt with a request for access to information concerning the parents of two identified individuals. In making her decisions in that appeal, Adjudicator Jiwan stated:

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.

She went on to apply certain assumptions in determining that the information concerning both individuals' parents in that appeal did not constitute their personal information. For the first individual, Adjudicator Jiwan stated:

Had the deceased been alive today, she would have been 111 years old and the evidence shows that she has been dead for over 30 years. In my view, it is reasonable to assume that the parents have also been dead for more than 30 years. Moreover, such an assumption is, in my view, consistent with the need for conservative assumptions as mentioned above. Therefore, I find that the names and place of birth of the deceased's parents do not constitute personal information pursuant to section 2(2) of the *Act*.

As far as the second individual was concerned, Adjudicator Jiwan stated:

I do, however, accept the appellant's argument with respect to the information relating to the parents ... I agree with the appellant, that it is reasonable to assume that the information about the parents relates to individuals who would have been much older than 95 years of age today and who, even on a conservative assessment, have likely been dead for more than 30 years. On this basis, I find that the information about the parents in the marriage record and the birth record does not qualify as personal information.

It is clear from the comments and findings of Adjudicator Jiwan that, absent proof establishing the dates of death, a determination of the probable dates can only be made on the basis of reasonably applied assumptions. Given the context in which this finding must be made, and the fact that the *Act* specifically provides for the retention of privacy rights for 30 years following death, I agree that these assumptions should be conservative. However, it is also relevant to point out that this Office in past orders has determined that privacy rights do diminish after death (see, for example, Orders M-50, PO-1717 and PO-1736). In my view, the longer a person has been dead, the more their privacy rights diminish, culminating in an elimination of these rights after 30 years.

If the two individuals identified by the appellant were alive today, they would be 97 and 93 years of age. Clearly, the parents of these individuals have all been dead for a considerable period of time. The question is whether or not it is reasonable to assume that they have been dead for the full 30 years required in order for section 2(2) to apply.

In estimating the dates of death, the Ministry has used more conservative assumptions than those advocated by the appellant. The Ministry also points out that the appellant has inaccurately interpreted the documentation provided by him in support of his assumptions.

I agree with the Ministry that the Statistics Canada print-out supplied by the appellant does not support his position that the life expectancy of individuals born in the time period of the parents in these cases was approximately 71 years. The 71-year figure referred to by the appellant appears to refer to the life expectancy at birth of people born between 1960 and 1962. That being said, the theory put forward by the appellant is sound. Although in the closing years of the 20<sup>th</sup> century it was not unusual, as Adjudicator Jiwan pointed out in Order P-1232, for someone still alive to live to the age of 95, the same cannot be said of people born in earlier times. The fact that life expectancy has increased over time would appear to me to be a commonly accepted fact, and applying current life expectancy assumptions to people born in the 1800s would, in my view, not be reasonable. For this reason, I do not accept the so-called "125 year rule" applied by the Ministry in these appeals.

In the case of the parents in appeal #1, if it is conservatively assumed that they were both 20 at the time of their daughter's birth, that would place their year of birth as 1884. In order for these parents to have been dead for at least 30 years, they would have to have died earlier than 1971 or, in other words, at an age not older than 87. Applying the same assumptions to the parents in appeal #2, they would have been born in 1888 and, if they lived until 1971, would have died at the age of 83.

According to Statistics Canada, the life expectancy of individuals who had attained the age of 20 in the first decade of the 20<sup>th</sup> century was 68. In my view, in circumstances where the actual dates of death are not known, as is the case in these appeals, the figure available from Statistics Canada is a reasonable one to apply in making assumptions regarding the life expectancy of the parents. Even if five years are added to this figure bringing the life expectancy to 73, in order to ensure that the assumptions are sufficiently conservative, the parents in appeal #1 would have died in 1957 and the parents in appeal #2 in 1961.

In the circumstances of these appeals, I find that it is reasonable to conclude that the parents of the individuals identified by the appellant have all been dead for at least 30 years. Accordingly, pursuant to section 2(2), their names and places of birth do not qualify as their personal information, and cannot qualify for exemption under section 21(1) of the *Act*.

**ORDER:**

1. I order the Ministry to disclose the contents of lines 14, 15, 16 and 17 of the record at issue in Appeal PA-000183-1, and the contents of lines 16, 17, 18 and 19 of the record at issue in Appeal PA-000188-1 to the appellant by **April 19, 2001**.
2. In order to verify compliance with 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: \_\_\_\_\_  
Tom Mitchinson  
Assistant Commissioner

\_\_\_\_\_  
March 27, 2001

## **POSTSCRIPT**

In his representations, the appellant suggests that the Ministry, in raising the section 21(1) exemption claim, should have the burden of establishing that any individual whose personal information is protected by this exemption claim has not been dead for more than 30 years. He goes on to state that:

... it is incumbent upon the Ministry to search for the date of death of the deceased person's parents and determine if the parents died more or less than 30 years ago.

The Ministry disagrees with the appellant, pointing to the absence of any legal obligation to conduct these additional searches, and some practical problems associated with searches of this nature.

Given my findings in this appeal, it was not necessary for me to determine what, if any, obligation the Ministry has to take active steps to ascertain the actual date of death of the parents in these circumstances. However, it is clear that knowledge of the actual date of death is the best method of making a determination of the application of section 2(2) of the *Act*, and any steps taken by the Ministry to do so in future similar situations would be welcome.