ORDER PO-1923

Appeal PA_000175_1

Ministry of Consumer and Business Services

NATURE OF THE APPEAL:

The Ministry of Consumer and Business Services (the Ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to a copy of a Long Form Statement of Death in respect of a named individual. The requester included an Oath of Secrecy in Form 30 [32] under the *Vital Statistics Act* (the *VSA*), sworn by the Consul General of the Republic of Poland in Toronto. The request for the record was made on a form prescribed by the *VSA*. The requester also clarified that in submitting this request, he was relying on section 72 of Regulation 1094 made under the *VSA*.

The Ministry denied access to the record under section 21(1) of the *Act* (invasion of privacy).

The requester, now the appellant, appealed the Ministry's decision.

During mediation, the appellant informed the Mediator that he was representing the Consul General of the Republic of Poland in Toronto and, although the request was being made under the *Act*, he believed he was entitled to a copy of the record by virtue of section 72 of Regulation 1094 to the *VSA*. The Ministry did not accept the appellant's position, and mediation was not successful in resolving this appeal.

Once the appeal had been transferred to the adjudication stage, I sent a Notice of Inquiry initially to the Ministry setting out the issues on appeal. The Ministry provided representations in response. I then sent the Notice to the appellant along with the non-confidential portions of the Ministry's representations. The appellant also provided representations. I then provided the Ministry with a Supplementary Notice of Inquiry, seeking representations on certain aspects of section 21(1) not addressed in the original Notice. I also provided the Ministry with a copy of the appellant's representations. The Ministry provided additional representations in response to the Supplementary Notice.

RECORDS:

The record consists of a 1-page copy of the Long Form Statement of Death of a named individual.

DISCUSSION:

PERSONAL INFORMATION

The section 21(1) personal privacy exemption applies only to information which qualifies as "personal information", as defined in section 2(1) of the *Act*. "Personal information" is defined, in part, to mean recorded information about an identifiable individual, and include the following specific types of information:

> (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,

> (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
>
> (d) the address, telephone number, fingerprints or blood type of the individual,
>
> (h) 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 Ministry submits that the record contains personal information.

> The [Ministry] submits that the record at issue in this appeal contains personal information as it is recorded information about an identifiable individual, namely [the deceased]. [The deceased's] birthplace (which is information relating to his national or ethnic origin), age, and marital status all appear on the record as specified in clause (a) of the definition of personal information...The address of [the individual who provided the information to the Ministry] appears on the record as specified in clause (d). Finally, pursuant to clause (h), [the deceased's] name appears with other personal information relating to him.
>
> Section 2(2) of the *Act* provides that personal information does not include information about an individual who has been dead for more than thirty years. As it is apparent from the record that [the deceased] died in 1980, and has therefore been dead for less than thirty years, the Respondent submits that section 2(2) of the *Act* is inapplicable.

The appellant's representations do not deal specifically with this issue.

I find that the record contains the personal information of the deceased individual identified in the appellant's request, including his name, date of birth, age, sex, address at the time of death, ethnic origin, occupation and other information relating to his funeral and burial arrangements. I also find that the record contains the personal information of the "informant" (the term used to describe the individual who provided the information contained on the record), including his name, address and relationship with the deceased. Finally, I find that the record contains the last name of the deceased's father and the country of birth of both the father and mother of the deceased. Although this information may already be known to the appellant, it is technically personal information of the mother and father under the *Act*.

Information contained on the record which relates to the funeral home and certification details concerning Ministry officials is professional in nature and does not qualify as "personal information". The record does not contain any of the appellant's personal information.

INVASION OF PRIVACY

General

Where an appellant seeks access to the personal information of another individual, section 21(1) of the *Act* prohibits an institution from disclosing this information unless one of the exceptions in paragraphs (a) through (f) of section 21(1) applies. In this case, the appellant claims that section 21(1)(d) applies. The only other exception with potential application is section 21(1)(f). These sections read:

> A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,
>
> (d) under an Act of Ontario or Canada that expressly authorizes the disclosure;
>
> (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

Section 21(1)(d)

In order for section 21(1)(d) of the *Act* to apply, there must be an express statutory authority for disclosure of the information (Order P-1635). Previous orders of this Office have found that the interpretation of the words "expressly authorizes" in section 21(1)(d) of the *Act* closely mirrors the interpretation of similar wording in section 38(2) (see Orders M-292, M-1154 and PO-1640). Investigation Report I90-29P, established the interpretation of section 38(2) as follows:

> The phrase "expressly authorized by statute" in subsection 38(2) of the *Act* requires either that specific types of personal information be expressly described in the statute, or a general reference to the activity be set out in the statute, together with a specific reference to the personal information to be collected in a regulation made under the statute i.e. in a form or in the text of the regulation.

The appellant relies on section 72 of Regulation 1094 to the *VSA* in support of his position that a statute of Ontario expressly authorizes disclosure of the requested information. Section 72(1) of Regulation 1094 states in part:

> The following persons, only after taking an oath of secrecy in Form 32, may have access to or be given information from the records in the Registrar General's office:
>
> 4. Upon application to the Registrar General, a representative of a state or country other than Ontario or Canada.

The appellant has provided me with copies of its Oath of Secrecy and its application to the Registrar General.

The appellant also submits extensive documentation concerning his past dealings with the Ministry and other institutions, but does not address the specific requirements of section 21(1)(d) and the previous orders of this Office that have dealt with the application of this section.

The Ministry submits:

> The [appellant] raises the issue of "special access" under section 72 of Regulation 1094 made under the *VSA*. Under item 4 of section 72(1), the Deputy Registrar General **may** permit, upon application, "a representative of a state or country other than Ontario or Canada" to have access to or be given information from the records in the Registrar General's office, after taking an oath of secrecy.
>
> Since 1994, there has been on-going correspondence by way of letters, telephone calls, and meetings between representatives of the Office of the Registrar General and [the appellant], concerning access to *VSA* records by consulates and embassies.
>
> A copy of a letter dated March 2, 1995 from Edward J. Kelly, then Deputy Registrar General, to [the appellant], acting on behalf of an embassy or consulate, is attached as Appendix "A". This letter addresses the entitlement by embassies and consulates to records under the *VSA*. At paragraphs 5, 6 and 7, Mr. Kelly clearly outlines his concerns and requirements:
>
> > I understand that you...are aware that the special access provisions (section 72 of Regulation 1094) are discretionary. These provisions are to be used only in exceptional circumstances and are not to be used in order to circumvent the general entitlement provisions.
> >
> > Please be advised that if an official of ... should make an application for access under section 72 of Regulation 1094, I would require, in exercising my discretion, sufficient information to satisfy me that the disclosure to such a third party would constitute an acceptable and unavoidable intrusion into the privacy of persons named in the records in question. Some of the information which might be helpful in that regard would be as follows:
> >
> > 1. Information explaining why the applicant cannot provide written authorization from someone entitled to the records;
> > 2. Information as to whether or not the applicant has inquired into or determined the existence of the Administrator or Executor of the Estate in question;

> 3. A clear description of the purpose for which the records are sought. A statement of purpose, such as in your application, to the effect that the records are required for "estate purposes" could reflect many different purposes and is therefore insufficient. Accordingly, more particulars would be required as to exactly why the documents are being sought;
> 4. Information as to the particular circumstances which justify, according to the applicant, a departure from the general entitlement provisions;
> 5. Have the next of kin or heirs at law requested the assistance of the applicant in obtaining such records?
> 6. How does the applicant know that the deceased or the next of kin or the heirs at law are in fact citizens of ...? If such heirs at law or next of kin have not requested the assistance of the applicant, how does the applicant know that such persons would like the assistance of the applicant?
> 7. Information as to why the applicant is not able to obtain the information they seek from other sources, such as friends or relatives of the deceased?
> 8. Information that would satisfy me as Deputy Registrar that the request is not simply of a speculative or inappropriate nature.
>
> While I understand that it may be more convenient for certain applicants to attempt to access the sensitive and confidential records in our office, convenience alone is not a sufficient basis for granting access to such confidential records.

...

> The [Ministry] submits that item 4 of section 72(1) of Regulation 1094 is discretionary and not mandatory. It does not **require** the disclosure of information to embassies and consulates. Further, the use of the phrase "upon application" in only item 4 under section 72 clearly presupposes the fulfilment of criteria by "a representative of a state or country other than Ontario or Canada" prior to the release of *VSA* records by the [Office of the Registrar General].

Section 72 of Regulation 1094 provides the Registrar General with discretionary power to disclose records to a representative of a state or country other than Ontario or Canada. The Ministry has provided me with a list of the factors that are considered in this exercise of discretion.

In Order MO-1179, Senior Adjudicator David Goodis dealt with a similar issue in deciding whether sections of Ontario Regulation 265/98 made under the *Police Services Act* expressly authorized the disclosure of certain information to a requester pursuant to section 14(1)(d), the equivalent of section 21(1)(d) found in the *Municipal Freedom of Information and Protection of Privacy Act*. Adjudicator Goodis found:

> Since none of the sections of the Regulation cited by the appellant applies, section 14(1)(d) has no application. Even if I were to find that one or more of these sections applied, in my view, section 14(1)(d) would not apply in any event, because these disclosure powers granted by the Regulation are discretionary rather than mandatory in nature. The Regulation is designed to permit chiefs of police or their designates to exercise discretion in each case and to disclose personal information only where they deemed it appropriate in the circumstances. In some cases, even if the conditions for disclosure in the Regulation are met, the chief or designate may determine that the invasion of privacy resulting from disclosure outweighs any benefit and decide not to disclose. If section 14(1)(d) were interpreted in a way that the personal information **must** be disclosed in the event the conditions in sections 4 or 5 of the Regulation were met, this would undermine the discretionary nature of the power, the intent of the Regulation and one of the purposes of the *Act*, as set out in section 1(b), to protect the privacy of individuals with respect to personal information about themselves held by institutions.
>
> (See also Order MO-1264)

I agree with Senior Adjudicator Goodis' approach and will apply it here. The Ministry has explained that it has a process for providing information and records of the nature requested by the appellant to consulates and embassies. This process involves the exercise of discretion through a consideration of the criteria set out above. Because the process under section 72 of Regulation 1094 is discretionary and not mandatory, for the reasons outlined by Senior Adjudicator Goodis, I find that section 21(1)(d) of the *Act* does not apply in this appeal.

Section 21(1)(f)

The Ministry maintains that disclosure of the record would constitute an unjustified invasion of privacy, and that the exception provided by section 21(1)(f) does not apply.

Section 21(2) and (3) of the *Act* provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the privacy. 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 privacy; and 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 under section 21(3) 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(3)

The Ministry relies on the presumptions contained in section 21(3)(a) and (h), which read:

> A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,
>
> (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
>
> (h) indicates the individual's racial or ethnic origin, sexual orientation or religious or political beliefs or associations.

Having reviewed the record, I find that the information concerning the deceased's birthplace and the birthplace of his parents indicates their "ethnic origins" and therefore falls within the scope of section 21(3)(h), regardless of the fact that this information may already be known by the appellant. In the particular circumstances of this appeal, I also find that certain other information about the deceased individual contained in the record falls within the scope of section 21(3)(a). I am unable to describe this information in greater detail without actually revealing it. Disclosure of these parts of the record would constitute a presumed unjustified invasion of privacy. None of the requirements listed in section 21(4) apply to this information and, as stated above, a combination of factors under section 21(2) cannot outweigh a presumption under section 21(3).

Section 21(2)

As far as the remaining personal information in the record is concerned, the Ministry submits that factors listed in sections 21(2)(f), (h) and (i) which favour privacy protection are present and relevant. The Ministry's submissions regarding sections 21(2)(f) and (i) relate to those parts of the record I have found qualify under section 21(3)(a), so it is not necessary for me to consider these two sections further here.

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

This section reads:

> A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,
>
> the personal information has been supplied by the individual to whom the information relates in confidence;

The Ministry submits:

> The *Vital Statistics Act* has historically been a confidentiality statute, predating the *Freedom of Information and Protection of Privacy Act*. The *Vital Statistics*

> *Act*, 194, S.O. 1948, c. 97 established a specific confidentiality provision and restricted access to the information in most circumstances at the discretion of the Registrar General. These provisions continue to the present day in the VSA. Further, the current *Act* provides in section 53 that:
>
> > "No division registrar, sub-registrar, funeral director or person employed in the service of Her Majesty shall communicate or allow to be communicated to any person not entitled thereto any information obtained under this Act, or allow any such person to inspect or have access to any records containing information obtained under this Act."
>
> Due to the very nature of a death registration, personal information contained therein is provided by an informant rather than by the person to whom the death registration relates. The *Vital Statistics Act* specifies at section 21(2) that a statement in the prescribed form containing the particulars of the deceased person shall be completed by the nearest relative at the death or last illness, or by any relative who may be available. If no such relative is available, the statement may be completed by other specified adult persons. Nonetheless, there has been and continues to be a reasonable public expectation that the information required to be provided under the VSA will be kept confidential. In Order P-309, the Assistant Commissioner found that section 21(2)(h) was a relevant consideration weighing against disclosure of the vital statistics records that were requested and the Respondent submits that this should be taken into consideration in the circumstances of this appeal.

Order P-309 dealt with a request by a baby food manufacturer for access to information provided by parents regarding their children contained on the "Statement of Live Birth" forms filed with the Ministry under the *VSA*. The form included a statement outlining the authority for collecting the information, and listed the purposes for which the registration information would be used. In those circumstances, I found that "it would be reasonable for a parent to infer from the statement that the information on the form would be kept confidential except in the circumstances outlined on the form". No such statement or similar indication regarding the intended use of the information is contained on the form which is the record at issue in the present appeal, and it is clear that the uses of information on a "Statement of Death" form are different from those relating to information contained on a "Statement of Live Birth" form. I accept the Ministry's position that an "informant" would have a reasonably held expectation that the information provided would be kept confidential except when used for purposes connected to the death of an individual, and that this would include the administration of estates. However, given the nature of the information and the need to use it in ways which would require disclosure in order to effectively administer estates, I find that the section 21(2)(h) factor carries low weight in these circumstances.

The factors listed in section 21(2) of the *Act* are not exhaustive. Unlisted factors may also be relevant, depending on the particular circumstances of an appeal. In my view, there are two unlisted factors with potential relevance in this appeal.

Unlisted Factor - diminished privacy interest after death

In Order PO-1717, I stated the following:

> 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.

In addressing this unlisted factor, the Ministry submits that it should be applied under section 21(2) only in the rarest of circumstances, if at all. The Ministry identifies a number of past orders that have interpreted section 2(2) of the *Act*, and submits that this provision points to a clear legislative intent to extend the personal information protections of the *Act* until 30 years following death.

Consistent with the past orders identified by the Ministry, I have determined in this case that, because the deceased has not been dead for 30 years, the information about him and others contained in the record falls within the scope of section 2(2). I also do not disagree with the Ministry that this unlisted factor should be applied with care, given the wording of this section. Each case must be carefully considered on its particular facts and circumstances.

In the present case, the deceased died in 1980, which means that he has been dead for approximately 21 years, a relatively long period of time. Given the age of the deceased at the time of his death, it is reasonable to assume that his father has been dead for at least 21 years, and probably longer. Accordingly, I find that the privacy interest of the deceased is reduced

significantly, but not eliminated; and the privacy interests of his father is reduced to an even greater degree given the significant possibility that he has been dead for more than 30 years. However, there is no indication that the "informant" is dead or, if so, the date of death. Accordingly, this unlisted factor is not relevant as it relates to the personal information of the informant contained on the record.

Unlisted factor - benefit to unknown heirs

In Order PO-1717, I made the following comments regarding this unlisted factor:

> 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.

The appellant submits:

> The Consul General of the [named country] believes, and my other clients believe, that if the present practice continues, there will be many estates similar to the [named individual] estate where mistakes will be made in the distribution of the proceeds of an estate. It is believed that in many instances, mistakes will be made because the Public Guardian and Trustee looks to heir locators and researchers and other third parties to locate and identify heirs rather than refer these matters to Embassies and Consulates General which are able to research these matters with the assistance of their Ministry of Foreign Affairs, and with the assistance of other Ministries, Departments and Offices in their own countries to which the Embassies and Consulates General have access.
>
> Heir locators and researchers do not have access to the Ministry of Foreign Affairs in the country of origin of the deceased. They do not have access to any Ministries, Departments and records to which Embassies and Consulates General have access.

> The present practice of the Ministry of the Attorney General and the Office of the Public Guardian and Trustee and their reluctance to involve the Embassies and Consulates General in the administering of these estates will undoubtedly result in a very substantial percentage of intestate estates remaining undistributed with the rightful heirs never receiving the proceeds of these estates to which they are entitled, and the estate will eventually escheat to the Ontario Treasurer.

The Ministry acknowledges that there may be situations where it is appropriate to consider this unlisted factor, but submits that this is not one such situation. The Ministry points out that, unlike the situation in Orders PO-1717 and PO-1736, the appellant in this case is not a private heir tracer, and that the information contained in the record was not collected by the Ministry "for the purpose of locating heirs, nor for a purpose consistent with locating heirs". The Ministry also provides evidence that it has been approached in the past by different consulates claiming that the same deceased individual was a national of their country, thereby raising concerns that the Ministry is being asked to provide access to personal information with no way of determining that the individuals in question are or were citizens of the country represented by the particular consulate. The Ministry agrees that every assistance should be given to a consulate that is searching for next-of-kin where it would appear probable that the next-of-kin reside in the country of origin of the deceased individual, and submits that it exercises discretion under the *VSA* to disclose information when it has concluded that this probability has been established.

I acknowledge that the appellant is not a private heir tracer but, in my view, his rationale for seeking access to the record is analogous to that of a private heir tracer. The appellant's client is the Consulate of Poland which is seeking access to information for the purpose of locating potential heirs to the estates of individuals who died in Ontario but who may have heirs who are citizens of Poland. I also acknowledge that the appellant's client has other responsibilities, but in the circumstances of this appeal, in my view, the Consulate of Poland is performing a function akin to a private heir tracer; attempting to identify and locate individuals who could be entitled to the proceeds of an estate that would otherwise escheat to the Crown. Therefore, I find that the considerations found relevant in past orders concerning private heir tracers apply in the same manner and to the same extent to the appellant in the circumstances of this appeal.

I also accept that the Ministry can reasonably require some evidence that a consulate requesting records for the purpose of searching for next-of-kin has reason to believe that the deceased individual was at one time a national of the country represented by the consulate. In some instances, including this appeal, the requested record itself may contain the necessary evidence on its face.

Considering the particular circumstances of this appeal and the contents of the specific record being requested by the appellant, I find that the potential for disclosure of the personal information of the deceased and his father to lead to individuals proving their entitlement to assets of estates which they may not have been able to otherwise is a relevant factor. The weight of this factor varies according to the extent to which a particular item of personal information assists in the identification of potential heirs. In the circumstances of this appeal, the last name

of the deceased's father, which would appear to be known to the appellant, is of very limited assistance in this regard. However, based on the representations provided by the appellant, I accept that the date of death, place of death, age, date of birth, marital status and occupation of the deceased could reasonably be expected to assist in the identification of potential heirs. Applying similar reasoning to that followed by Senior Adjudicator Goodis in Order PO-1736, I find that this unlisted factor applies to a high degree as it relates to the date of death; to a moderate to high degree to the place of death, date of birth, age, marital status and occupation of the deceased; to a low degree to the last name of the deceased's father; and not at all to any personal information of the informant.

Analysis of factors

I found above that there was one listed factor favouring non-disclosure of all of the personal information in the record; and two unlisted factors favouring disclosure of certain portions of personal information contained in the record. These factors and weights accorded to them are as follows:

- *supplied in confidence* (section 14(2)(h)) - favours non-disclosure - low weight
- *diminished privacy interest after death* - favours disclosure - moderate to high weight for personal information of deceased and high weight for personal information of the deceased's father; no weight for personal information of the informant
- *benefit to unknown heirs* - favours disclosure - high weight for deceased's date of death; moderate to high weight for deceased's date of birth, place of death, age, marital status and occupation; low weight for last name of deceased's father; no weight for personal information of informant

In balancing these factors, I find that the factors favouring disclosure outweigh the factor favouring privacy protection with respect to the date of death, date of birth, place of death, age, marital status and occupation of the deceased, and to the last name of the deceased's father. Although all of the information on the Statement of Death form may have been provided by the "informant" in confidence, the information described above is not highly sensitive and much of it may already be known by the appellant and others familiar with the deceased during his lifetime. The fact that the information was provided approximately 21 years ago also reduces its sensitivity. On the other hand, this information would be of value in identifying potential estate heirs, which is an important public policy objective. Accordingly, I find that disclosure of the date of death, date of birth, place of death, age, marital status and occupation of the deceased, and the last name of the deceased's father would not constitute an unjustified invasion of the privacy of the deceased or his father within the meaning of section 21(1)(f), and this information is therefore not exempt under section 21(1) and should be disclosed to the appellant.

There are no factors favouring disclosure of the personal information of the "informant", and I find that disclosure of this information would constitute an unjustified invasion of his privacy. This information does not qualify for the section 21(1)(f) exception, and is therefore exempt under section 21(1) of the *Act*.

I will provide the Ministry with a highlighted version of the record which identifies the portions that should not be disclosed, either because they contain information which falls within the scope of one of the presumptions under section 21(3) or because disclosure would constitute an unjustified invasion of the privacy of the "informant".

COMPELLING PUBLIC INTEREST

In his representations, the appellant argues that section 23 of the *Act* applies. Section 23 of the *Act* states:

> An exemption from disclosure of a record under sections 13, 15, 17, 18, 20 , **21** and 21.1 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

I have found that certain personal information of the deceased falls within the scope of the section 21(3)(a) and (h) presumptions, and that the personal information of the "informant" qualifies for exemption under section 21(1). It is only this information that is subject to consideration under section 23 of the *Act*.

For section 23 to apply, two requirements must be met. First, there must exist a compelling public interest in the disclosure of the records. Second, this interest must clearly outweigh the purpose of the exemption [Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance)* v. *Ontario (Information and Privacy Commissioner)*, (1999), 118 O.A.C. 108 (C.A.), leave to appear refused (January 20, 2000), Doc. 27191 (S.C.C.].

In order to find that there is a compelling public interest in disclosure, the information contained in a record must serve the purpose of informing the citizenry about the activities of their government, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices (Order P-984).

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).

The appellant provides lengthy submissions on what he views as the compelling public interest in disclosure of information concerning deceased individuals to embassies and consulates in

order to assist in the identification of potential heirs. In my view, the appellant's arguments have some persuasive value to the extent that they would apply to a finding that the entire record qualified for exemption under section 21. However, I have determined that some personal information of the deceased and his father does not qualify for this exemption claim. The appellant's submissions do not convince me that there is a compelling public interest in disclosing the portions of the record that fall within the section 21(3)(a) presumption or otherwise satisfy the requirements of the mandatory section 21 exemption claim.

As stated earlier in my discussion of section 21(2), although the appellant is not a private heir tracer, his rationale for seeking access to the record is analogous to that of a private heir tracer. His client is the Consul General of Poland, which is seeking access to information for the purpose of locating potential heirs to the estates of individuals who died in Ontario but who may have heirs who are citizens of Poland. Despite the acknowledged fact that the appellant represents a public institution, in my view, the interest that he represents in seeking access to the Certificate of Death of the deceased individual is essentially a private rather than a public interest. If heirs of the deceased's estate are identified in Poland, either through the efforts of the appellant's client or otherwise, any proceeds would flow to them, not to the public institution. Accordingly, I find that any interest which may exist in these circumstances is the private interest of the potential heirs, not a public interest as represented by the appellant or his client.

Therefore, in the absence of a demonstrated public interest in disclosure of the personal information of the "informant" or the personal information of the deceased or his parents that will otherwise not be provided to the appellant as a result of this order, I find that the requirements of section 23 have not been established.

ORDER:

1. I uphold the decision of the Ministry to deny access to the portions of the record containing the birthplace of the deceased individual and his parents, the information which I have found qualifies under section 21(3)(a) of the *Act*, and any personal information of the "informant".

2. I order the Ministry to disclose to the appellant all remaining portions of the record, which consist of the date of death, date of birth, place of death, age, marital status and occupation of the deceased, and the last name of the deceased's father, as well as those portions that do not contain any personal information. I have attached a highlighted version of the record with the copy of this order sent to the Ministry's Freedom of Information and Privacy Co-ordinator which identifies those portions that should **not** be disclosed. This disclosure is to take place by **July 31, 2001.**

3. In order to verify compliance with provision 2, I reserve the right to require the Ministry to provide me with a copy of the material disclosed to the appellant, only upon request.

Original signed by: July 10, 2001
Tom Mitchinson
Assistant Commissioner