



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER PO-1963**

**Appeal PA-010056-1**

**Office of the 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/Télé: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

## **NATURE OF THE APPEAL:**

The Office of the Public Guardian and Trustee (the OPGT) received a request under the *Freedom of Information and Protection of Privacy Act* (the Act) for access to the following information:

Copies, appropriately edited as per the FOI Act, of any releasable documents, memos, letters and reports that refer to persons who have died between April 1, 2000 and June 30, 2000 inclusive, without a known will or with a will that is no longer effective because the beneficiaries of the residue of the estate have either deceased or their whereabouts is unknown; and where the closest next-of-kin of the deceased are unknown.

If such documents, referred to in paragraph one, do not exist, then we ask that we be simply provided with the name of the deceased.

Following its discussions with the requester, the OPGT confirmed that he was seeking access to:

The names of Ontario residents, who have died between January 1, 2000 and December 31, 2000 inclusive, who passed away without a known will or with a will that is no longer effective because the beneficiaries of the residue of the estate have either pre-deceased the deceased or their whereabouts is unknown, and where the closest next-of-kin of the deceased are unknown.

The OPGT also confirmed that the requester sought access only to information pertaining to those estates with a value of more than \$100,000. The OPGT then provided the requester with a decision letter indicating that it was prepared to produce a record containing the responsive information upon payment of the sum of \$1,290. The requester paid the fee, and the OPGT produced and then denied access to the responsive record, claiming that this information was exempt from disclosure under section 21 of the *Act*. The requester, now the appellant, appealed the OPGT's decision to deny access to the record which it created.

I initially sought the representations of the OPGT and received its submissions, which I then shared with the appellant, in their entirety. The appellant also made extensive representations which were shared, in part, with the OPGT. The appellant's representations include submissions on the application of the "public interest override" provisions in section 23 as well as a wide range of other issues. His representations also include a great deal of information which did not pertain to the issues extant in this appeal. For this reason, I did not provide all of the appellant's representations to the OPGT. Rather, I decided to provide the OPGT only with those portions of the appellant's representations which specifically addressed the issues before me. In my view, no useful purpose would have been served by sharing all of the appellant's submissions with the OPGT. Additional reply submissions were also made by the OPGT.

## **RECORDS:**

The sole record at issue in this appeal consists of a list of the names of those estates where the deceased died between January 1, 2000 and December 31, 2000 valued at more than \$100,000, along with the account numbers assigned by the OPGT to each. The list consists of those estates

where no next-of-kin had been located as of the date of the creation of the record, February 5, 2001.

## **DISCUSSION:**

### **PERSONAL INFORMATION**

Section 2(1) of the *Act* defines the term “personal information” to mean “recorded information about an identifiable individual, including, any identifying number assigned to the individual (paragraph (c)) and the individual’s name where it appears with other personal information relating to the individual (paragraph (h)). The record in this case contains the names of the deceased persons and the account number assigned to each estate by the OPGT. The list is comprised of those estates having a value of more than \$100,000 where the deceased died between January 1, 2000 and December 31, 2000 and includes those estates where no next of kin has been located.

I find that this information qualifies as “personal information” within the meaning of the definition of that term in section 2(1) of the *Act*. The account numbers, the fact that each estate has been valued at more than \$100,000 and the fact that no next of kin had been located, taken together with the names of the deceased persons, qualifies as the personal information of these individuals under paragraphs (c) and (h) of the definition in section 2(1).

### **INVASION OF PRIVACY**

Having found that the information contained in the records qualifies as “personal information” as that term is defined in section 2(1), I must now determine whether it is exempt from disclosure under the mandatory exemption in section 21(1), as submitted by the OPGT.

Where a requester seeks personal information of another individual, section 21(1) of the *Act* prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) through (f) of section 21(1) applies.

In my view, the only possible exception to the prohibition against disclosure in section 21(1) is that described in section 21(1)(f), which reads:

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

if the disclosure does not constitute an unjustified invasion of personal privacy.

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].

A section 21(3) presumption can be overcome if the personal information at issue falls under section 21(4) of the *Act* or if a finding is made under section 23 of the *Act* that a compelling public interest exists in the disclosure of the record in which the personal information is contained which clearly outweighs the purpose of the section 21 exemption [Order PO-1764].

If none of the presumptions in section 21(3) applies, the OPGT must consider the application of the factors listed in section 21(2), as well as all other considerations that are relevant in the circumstances of the case.

### **Application of the Section 21(3) Presumptions**

The OPGT submits that the disclosure of the information contained in the record would constitute an unjustified invasion of the personal privacy of the deceased persons listed therein as it relates to their medical condition under section 21(3)(a) as it specifies the year of their death. The Ministry further suggests that the record also describes the finances, income, assets, liabilities, net worth and financial history of these identifiable individuals under section 21(3)(f) as it is comprised only of those estates valued at more than \$100,000.

In the Notice of Inquiry which I provided to the OPGT, I asked it to consider and, if possible, distinguish the facts of this case from my decision in Order P-1187 in which I held that the disclosure of a list of estates which escheated to the Crown between 1984 and 1994 and were valued at more than \$10,000 would not constitute an unjustified invasion of personal privacy. The OPGT responded by pointing out that the request which gave rise to the appeal in Order P-1187 covered a considerable period of time and a considerable range in value. In contrast, the parameters of the present request were much more specific and the disclosure of this information is presumed to constitute an unjustified invasion under sections 21(3)(a) and (f).

The OPGT also relies on the decision of Senior Adjudicator David Goodis who addressed the application of the section 21(3)(f) presumption to similar information as follows:

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 submits that the record does not contain information that relates to an individual's medical condition under section 21(3)(a). He argues that this presumption can only apply to the medical condition of a living person. Insofar as section 21(3)(f) is concerned, the appellant advises that the \$100,000 figure referred to in his request was chosen at the suggestion of the OPGT, for its administrative ease. He states that he is prepared to proceed with the monetary parameters of his request removed, though this would change the nature and scope of the request in such a way as to make the identified record not responsive to the request.

The record which is responsive to the request as it currently stands is a list of names and account numbers which reflect those individuals who died in Ontario in the year 2000 whose assets exceed \$100,000. I find that because it is implicit in the request that the estate have a value of more than \$100,000, the record describes the "net worth" of these recently-deceased individuals as being not less than that amount. Accordingly, I concur with the OPGT's position that the information contained in the record falls within the ambit of the presumption in section 21(3)(f). As noted above, the decision of the Divisional Court in *John Doe v Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 held that once it is determined that information contained in a record falls within one of the presumptions in section 21(3), no factor or combination of factors under section 21(2) can rebut the operation of the presumption.

Because I have found that the presumption in section 21(3)(f) applies to the information in the record, I am unable to consider whether the factors listed in section 21(2) or the unlisted considerations referred to by the appellant apply in the circumstances of this appeal. As the information is subject to the presumption, I find that its disclosure is presumed to constitute an unjustified invasion of personal privacy under section 21(1). The record is, accordingly, exempt from disclosure under this mandatory exemption.

## **PUBLIC INTEREST IN THE DISCLOSURE OF THE RECORD**

The appellant submits that there exists a compelling public interest in the disclosure of the information contained in the record, as contemplated by section 23 of the *Act*. This provision reads:

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.

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] O.J. No. 488 (C.A.)].

In Order P-984, Adjudicator Holly Big Canoe discussed the first requirement referred to above:

“Compelling” is defined as Arousing strong interest or attention” (Oxford). In my view, the public interest in disclosure of a record should be measured in terms of the relationship of the record to the *Act*’s central purpose of shedding light on the operations of government. 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.

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.

### **Purpose of the exemption**

It is important to note that section 21 is a mandatory exemption whose fundamental purpose is to ensure that the personal privacy of individuals is maintained except where infringements on this interest are justified. In my view, where the issue of public interest is raised, one must necessarily weigh the costs and benefits of disclosure to the public. As part of this balancing, I must determine whether a compelling public interest exists which outweighs the purpose of the exemption. [Order PO-1705]

Under section 1 of the *Act*, the protection of personal privacy is identified as one of the central purposes of the *Act*. It is important to note that section 21 is a mandatory exemption whose fundamental purpose is to ensure that the personal privacy of individuals is maintained except where infringements on this interest are justified.

Commenting generally on the personal privacy exemption under the Freedom of Information scheme, the drafters of *Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy/1980*, vols. 2 and 3 (Toronto: Queen’s Printer, 1980) (the Williams Commission Report) indicated that the legislation must take into account situations where there is an undeniably compelling interest in access, situations where there should be a balancing of privacy interests, and situations which would generally be regarded as particularly sensitive in which case the information should be made the subject of a presumption of confidentiality. In this regard, the Williams Commission Report recommended that as the personal information subject to the request becomes more sensitive in nature ... the effect of the proposed exemption is to tip the scale in favour of non-disclosure”. [Order MO-1254]

## Discussion

Addressing the application of section 23 to the record, the OPGT submits that, as was the case in the appeal giving rise to Order PO-1936 involving it and another requester seeking information about estate matters, there does not exist any public interest in the disclosure of records relating to the administration of an individual's estate. Rather, in that case it was held that any interest which may exist in the disclosure of this information is purely a personal one.

The OPGT also submits that disputes involving the administration of an estate are resolved through proceedings before the Superior Court of Justice and are not public in nature. Finally, the OPGT points out that its performance is monitored by the Office of the Provincial Auditor and a Committee of the Legislature which oversees it. In this way, the public interest in the work of the OPGT is protected.

The appellant has made extensive submissions concerning what it perceives to be the deficiencies in the way in which the OPGT conducts its estate administration functions. He argues that the Provincial Auditor has expressed concerns about the efficiency of the OPGT in his 1999 report to the Legislature. The appellant summarizes his arguments in this regard as follows:

The public interest would be best served through democratic and thereby transparent process that fosters healthy competition to the benefits of all involved parties.

The appellant's submissions do not, however, address the question of how the disclosure of the information contained in **the records at issue in this appeal** is in the public interest. Rather, they are focussed on what the appellant perceives to be certain systemic problems in the procedures for locating heirs which are used by the OPGT.

Accordingly, I am of the view that I have not been provided with sufficient evidence to warrant a finding that there exists a public interest in the disclosure of the records at issue which clearly outweighs the purpose of the section 21(1) exemption. For this reason, I find that section 23 of the *Act* has no application in the circumstances of this appeal.

## ORDER:

I uphold the decision of the OPGT to deny access to the subject record.

Original signed by: \_\_\_\_\_  
Donald Hale  
Adjudicator

\_\_\_\_\_  
October 30, 2001