



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2240

Appeal PA-030216-1

Office of the Public Guardian and Trustee



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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 information from the OPGT's records regarding a named deceased individual's estate. The requester represents a foreign Consulate General. The OPGT confirmed with the requester that he was seeking information concerning the deceased's place and date of birth/death, name and last known address of parents/siblings of the deceased, place and date of marriage for parents/siblings, and name and last known address of any children of the deceased.

The OPGT identified four pages of responsive records and denied access on the basis that all of them qualify for exemption under section 21 of the *Act* (invasion of privacy). The OPGT subsequently located eight additional pages of responsive records and issued a supplementary decision letter, disclosing portions of four pages to the requester and denying access to the remaining information on the basis of section 21.

The 12 pages of records consist of correspondence between the OPGT and individuals or federal government officials regarding the administration of the estate of the deceased. Two pages are in a foreign language and two other pages appear to be handwritten translations of the foreign language documents.

The requester (now the appellant) appealed the OPGT's decision.

Mediation was not successful, and the appeal was transferred to adjudication stage. I began my inquiry by sending a Notice of Inquiry to the OPGT setting out the issues on appeal and seeking written submissions. The OPGT responded with representations, the non-confidential portions of which were then shared with the appellant. The appellant also submitted representations, which were in turn shared with the OPGT. The OPGT provided additional representations in reply.

RECORDS:

Page 4 is a letter from an individual to the OPGT identifying the author's relationship to the deceased. Pages 2 and 3 (which appear to be identical other than the dates) are letters from the OPGT to the author of page 4, seeking information concerning the deceased and any of his known relatives; and page 1 is the reply sent by the author of page 4.

Page 5 is a fax cover sheet that transmits a 2-page letter (pages 6-7) from the OPGT to the Social Insurance Number Registration Central Index department of the federal government, seeking information about the deceased; and page 8 is a similar letter from the OPGT to the federal department of Citizen and Immigration Canada. These pages have been disclosed to the appellant in part. The withheld portions consist of the following information:

- Page 5 - OPGT file number for the deceased's estate
- Page 6 - OPGT file number, the deceased's SIN number, and the name and marital status of the deceased at time of his SIN application
- Page 7 - the deceased's place of birth, mother's name, and the deceased's address at the time of his SIN application

With the exception of the OPGT file number and the deceased's SIN number, the other information on pages 6 and 7 would appear to have been provided by the federal government in response to the OPGT's request for information.

Page 8 - OPGT file number, date and place of birth of deceased, dates of two Certificates of Canadian Citizenship issued to the deceased, and the name of the deceased's father and the date of his Certificate of Canadian Citizenship

Pages 9 and 11 are handwritten documents primarily in a foreign language. Both are dated August 29, 1986, and the only English information on the pages is an address that appears on both pages. Pages 10 and 12 appear to be handwritten English translations of pages 9 and 11. If accurate based on the translations, page 9 would appear to be a power of attorney granted by the deceased to one of his relatives with respect to a foreign property; and page 12 would appear to be a purported transfer of interest in a property to the deceased from his mother. Pages 9-12 have been withheld in full.

DISCUSSION:

PRELIMINARY ISSUE

The appellant's letter of appeal and representations submitted in response to my Notice of Inquiry do not deal with the section 21 exemption claimed by the OPGT as the basis for denying access to the various records in this appeal. Instead, they argue for a right of access to information based on the application of Articles 5 and 37 of Vienna Convention on Consular Affairs, and the Consular Agreement entered into by the Government of Canada and the consulate represented by the appellant.

The appellant made similar arguments in a previous appeal, submitting that the Vienna Convention entitled him to obtain access to information held by the OPGT by virtue of the application of section 42(e) of the *Act*. I rejected this argument for reasons outlined in detail in Order PO-1936. The appellant has essentially reiterated the same arguments in the current appeal, and I can see no reason to address them in detail here, other than to say that I reject them for the same reasons.

PERSONAL INFORMATION

The section 21 personal privacy exemption applies only to information that 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 includes 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,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual, and
- (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 OPGT submits that the records contain personal information of individuals other than the appellant. I concur, and make the following specific findings:

- Pages 1-4 contain the personal information of the deceased and the author of pages 1 and 4, specifically the address of the author, the marital status of the deceased, and the names of other individuals identified by the author as relatives of the deceased. As far as pages 2 and 3 are concerned, I find that if the name, address and OPGT file number are removed from these pages, the information that remains does not qualify as "personal information" and can be disclosed.
- The OPGT file number on pages 5, 6 and 7 is the personal information of the deceased.
- The name used by the deceased and his marital status at the time of his SIN application, as well as his SIN number, all of which appear on page 6, constitute the personal information of the deceased.
- The place of birth and address at the time of making the SIN application that appear on page 7 are the personal information of the deceased; and the name of his mother that appears on this page is the personal information of both the deceased and his mother.

- The place of birth and information concerning the issuance of the deceased's Certificate of Canadian Citizenship that appears on page 8 is the personal information of the deceased; and the corresponding information about his father's citizenship on this page is the personal information of both the deceased and his father.
- The names, addresses, dates of birth and death and descriptions of assets that appear on pages 10 and 12 as the English translations of pages 9 and 11 constitute the personal information of the deceased and the other individuals identified or described on these pages.

None of the records contains the personal information of the appellant.

INVASION OF PRIVACY

Where an appellant seeks the personal information of another individual, section 21 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. The only exception with potential application in the circumstances of this appeal is 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. Section 21(2) lists some criteria for the OPGT to consider in making this determination; and section 21(3) identifies certain types of information, the disclosure of which is presumed to 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 (Div. Ct.))

The appellant offers no arguments in support of any of the factors listed in section 21(2) that favour disclosure of personal information.

In Order PO-1936, which, as noted earlier, also involved the appellant and a similar request, I identified two unlisted factors that favoured disclosure in the particular circumstances of that appeal. In balancing these factors against the various other factors favouring privacy protection in that case, I found that certain information should be disclosed to the appellant, and ordered the OPGT to do so.

For reasons I will now outline, I find that neither of these unlisted factors has any bearing on the outcome of this appeal.

Unlisted Factor - diminished privacy interest after death

In Order PO-1717, I explained the rationale for considering a diminished privacy interest after death as an unlisted factor under section 21(2) favouring disclosure:

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, signaling a strong intention to protect the privacy rights of deceased persons.

In applying this rationale to the circumstances present in Order PO-1936, I made the following findings:

Consistent with the past orders identified by the OPGT [Orders PO-1717, PO-1736 and M-50], I have determined in this case that, because the deceased has not been dead for 30 years, the information about her and others contained in the records falls within the scope of section 2(2). I also accept that the unlisted factor "diminished privacy interest after death" 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 1999, which means that she has only been dead for approximately two years. This is similar to the situation faced by Senior Adjudicator David Goodis in Order PO-1736, where he was dealing with individuals who were dead for a relatively short period of time. Orders PO-1717

and PO-1923, on the other hand, dealt with situations where the deceased had been dead for more than 20 years. As far as the deceased is concerned, in my view, the unlisted factor of “diminished privacy interest after death” is relevant in this appeal, as it was in Order PO-1736. However, unlike Orders PO-1717 and PO-1923, where this factor reduced the privacy interests of the deceased significantly, in this case, I find that the privacy interests of the deceased, like those in Order PO-1736, are only moderately reduced, and not eliminated. Given that the husband and the parents of the deceased have likely been dead for longer, I find that their privacy interests have been reduced to a more significant degree but, in the absence of any evidence to establish that any of them has been dead for 30 years, these interests have also not been eliminated.

In the current appeal, the deceased died on December 3, 2002, less than four months before the appellant submitted his request to the OPGT under the *Act*. Although I accept that an individual’s privacy interests begin to diminish at the time of death, four months is too short a period of time for any meaningful diminishment to have occurred. As identified in Order PO-1936, this unlisted factor must be applied with care, taking into account the fact that section 2(2) establishes some degree of privacy interest until 30 years following death. While each case must be assessed on its own facts, and the weight accorded to this unlisted factor will vary according to the length of time an individual has been dead, in my view, it would be inconsistent with the policy intent of section 2(2) to attribute any significant weight to this unlisted factor for at least the first year following death.

I have no evidence to suggest that any of the other individuals whose personal information is contained in the records is dead, or if dead, the date of any such death. Accordingly, this unlisted factor is also not a relevant consideration for the personal information of any individuals other than the deceased contained in the various records.

Unlisted factor - benefit to unknown heirs

In Order PO-1717, I also outlined the rationale for another unlisted section 21(2) factor favouring disclosure:

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 favoring disclosure.

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

In Order PO-1936, I found that this unlisted factor was relevant to some information at issue in that appeal, and found that it outweighed certain identified privacy interests. I ordered the OPGT to disclose information to the appellant based on the application of this factor.

Again, the circumstances of this appeal are different, and I find that the unlisted factor of “benefit to unknown heirs” does not apply.

In its representations, a copy of which was provided to the appellant during the course of this inquiry, the OPGT states:

In this case, the OPGT has located an individual who is a resident of Canada and who would appear to be the sole heir to the deceased (see information provided in Confidential Appendix). Furthermore the deceased and his parents were both Canadian citizens. The existence of an heir to this estate was disclosed verbally to the Appellant during mediation, without providing any personal identifying information about the heir. Therefore the Appellant and his client cannot argue that there is a benefit to unknown heirs if they obtain the requested records, since the heirs are not “unknown”. The Appellant has not provided any evidence to suggest that the legal heirs are in fact residents of the countries whose diplomatic authorities are represented by the appellant. Furthermore, those Orders which have found that the “benefit to unknown heirs” prevailed, allowed access only to a narrowly circumscribed range of information and for the main, only for escheated estates where the beneficiaries had not yet been identified. ...

Absent any evidence from the appellant on the possible application of this unlisted factor to the circumstances of this appeal, I find no basis to apply it. A legal Canadian heir would appear to have been identified by the OPGT, as confirmed in the confidential portion of the OPGT’s representations that was not shared with the appellant. In my view, the OPGT’s position that there is no “unknown heir” in this case is reasonable in the circumstances.

As stated in a number of previous orders, the two unlisted factors “diminished privacy interest following death” and “benefit to unknown heirs” are fact-specific and highly dependent on the particular circumstances of an appeal. In some instances the factors weigh heavily in favour of disclosure while in others, including the current appeal, they carry virtually no weight, based on the particular facts and circumstances and the evidence and arguments put forward by the parties.

I find that any weight given to unlisted factors favouring disclosure of personal information in this appeal is insignificant and clearly not sufficient to outweigh the inherent interest of privacy

protection present in records of this nature. Accordingly, I find that disclosure of any personal information in the records would constitute an unjustified invasion of privacy, and all of the personal information qualifies under the mandatory section 21 exemption.

ORDER:

1. I order the OPGT to disclose pages 2 and 3, subject to the severance of the name and address appearing at the top of each page and the OPGT file reference number appearing on both pages. This disclosure should be made to the appellant by **March 4, 2004**.
2. I uphold the decision of the OPGT to deny access to pages 1, 4, 9-12, the undisclosed portions of pages 5-8, and the name, address and OPGT file number appearing on pages 2 and 3.
3. In order to verify compliance with this order, I reserve the right to require the OPGT to provide me with a copy of the pages disclosed to the appellant pursuant to Provision 1, only upon my request.

Original signed by:
Tom Mitchinson
Assistant Commissioner

February 12, 2004