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

ORDER PO-2260

Appeal PA-020172-1

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/Téléc: 416-325-9195
TTY: 416-325-7539
http://www.ipc.on.ca

NATURE OF THE APPEAL:

The Public Guardian and Trustee (PGT) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act)* for:

> … a list of all estates being administered by the [PGT] which came to its attention between August 1, 1998 and April 30, 2002 with the following information: Client Name; Client Address; Last Occupation; Place of Death; Date of Death.

In response, the PGT granted access to "a list of estates that have been administered by the [PGT] for more than 18 months." The PGT said it was withholding the remaining information on the basis of the section 21 personal privacy exemption, stating:

> . . . [T]he PGT is of the view that the unlisted factors of "diminished privacy after death" and "benefit to unknown heirs" do not extend to estates of persons that have been under administration for less than eighteen months.

The appellant appealed the PGT's decision.

During mediation, the parties clarified that the information at issue in this appeal is the listed information in connection with the estates of persons that have been under administration of the PGT for less than 18 months.

Mediation could not resolve this appeal, and it was transferred to the inquiry stage of the process. A Notice of Inquiry was sent to the PGT, initially, and the PGT provided representations. The Notice of Inquiry, along with a copy of the PGT's representations, was then sent to the appellant. The appellant provided representations in response, which were in turn shared with the PGT. In response the PGT provided brief reply representations.

RECORDS:

The record at issue is the severed portion of a list of active estate files administered by the PGT. The severed portion is the Client Name, Client Address, Last Occupation, Place of Death, and Date of Death, currently contained in the database, relating to the estates of persons that have been under administration of the PGT for less than eighteen months.

DISCUSSION:

PERSONAL INFORMATION

Under section 2(1) of the *Act*, "personal information" is defined, in part, to mean recorded information about an identifiable individual.

The request in this appeal is for information relating to the estates of deceased individuals, and is for the deceased's name, address, last occupation, place of death and date of death.

In Order PO-1736 [upheld on judicial review in *Ontario (Public Guardian and Trustee) v. Goodis* (December 13, 2001), Toronto Doc. 490/00 (Ont. Div. Ct.), leave to appeal refused (March 21, 2002), Doc. M28110 (C.A.)], Senior Adjudicator David Goodis found that each of these items of information constitute the personal information of the deceased individual.

Both the PGT and the appellant take the position that the requested information is the personal information of the deceased individuals. I agree, and am satisfied that this information is "about" identifiable individuals within the meaning of the section 2(1) definition of "personal information."

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.

Section 21(1): exceptions to the exemption that permit disclosure

The PGT takes the position that none of the exceptions in section 21(1)(a) through (e) apply, and the appellant acknowledges that these exceptions do not apply in the circumstances of this appeal. I agree. In my view the only exception to the mandatory exemption in section 21(1) 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.

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 section 21(2) [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767].

Section 21(3)(f): presumption against disclosure for financial information

The PGT takes the position that disclosing the requested information is presumed to be an unjustified invasion of personal privacy under section 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:

> . . . [T]he following significant personal information about the individuals would be disclosed: the date and place of death, address, occupation, and the fact that the assets of their estate are at least equivalent to the minimum value of estates commonly known to be accepted for administration by the [PGT].
>
> It is common knowledge that the [PGT] only administers estates with a minimum value of $5,000 after payment of the funeral and all debts owing to the estate. This information is available in an information brochure about the office's role in estate administration, which is posted on [our] website. Therefore providing the list of names of deceased persons would also automatically disclose that their estate was valued at a minimum value of $5,000 after payment of the funeral and all debts owing to the estate.
>
> The facts in this case are very different from previous IPC Orders, the majority of which deal with estates which have escheated to the Crown…
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> The list … to which access has been denied, consists of a significant number of estates where the person has died only a few months before the date of the request and where the PGT has not yet filed an application to the court to formally administer the estate. Consequently, no public record exists of the fact that the [PGT] is the proposed estate trustee.
>
> … [S]imply disclosing the name of a recently deceased person, for whose estate no application has yet been made to the court, will be sufficient to allow the requester to precisely identify that individual and make the linkages to other personal information about the deceased individual …

Previous orders have addressed the issue of whether or not disclosure of certain information is specific enough to actually "describe" a person's financial information for the purpose of the section 21(3)(f) presumption. In Order PO-2011, Adjudicator Dawn Maruno stated as follows in

deciding whether the disclosure of the name of an individual, combined with the fact that the individual held at least one share in an identified corporation, would disclose information which would satisfy the presumption in section 21(3)(f):

> As I found above, disclosure of individuals' names would reveal the fact that each individual holds at least one share of a certain now-dissolved Ontario corporation. While I accept that, generally speaking, this information relates to an asset of the individual, it is too vague and generalized to qualify as a "description" of the individual's assets, finances, financial history or activities. In my view, to qualify under this section, the information must be more specific, and must reveal, for example, the dollar value or size (in this case number of shares) of the asset in question. In the circumstances of this appeal, the appellant would have no way of determining whether the individual's shares are worth a few cents, or many thousands of dollars, or some amount in between. Therefore, I find that section 21(3)(f) does not apply.

By contrast, Senior Adjudicator Goodis reviewed the application of this presumption to the value of specific estates in Order PO-1736. He determined that the presumption did apply to certain information about the total value of the assets of an estate, and stated that "information need not be absolutely precise or accurate in order to qualify for the section 21(3)(f) presumption."

Thus, the financial information must be reasonably accurate and specific to meet the "describes" requirement, but it need not be absolutely precise.

In the circumstances of this appeal, I accept that disclosing the name of the deceased individual in connection with the fact that the PGT is the proposed estate trustee would confirm that the value of the estate of the deceased is greater than $5,000; however, in my view, merely disclosing that the estate value is greater than $5,000 is not sufficient to fall within the presumption in section 21(3)(f). This information is too generalized to be regarded as "describing" the type of information set out in the section 21(3)(f) presumption. In this appeal, the appellant would have no way of determining whether the individual's "net value" or "assets" are worth slightly more than $5,000, or substantially more than that. Simply disclosing that an estate has a value greater than $5,000 is not specific enough to qualify for the section 21(3)(f) presumption.

(See also Order P-1187, in which Adjudicator Hale determined that disclosing the exact value of the estates of deceased individuals fit within the section 21(3)(f) presumption, but disclosing the names did not.)

Accordingly, neither the presumption in section 21(3)(f), nor any other presumption in section 21(3) applies to the record.

Section 21(2): factors weighing in favour of or against disclosure

Introduction

In order to determine whether disclosure would constitute an unjustified invasion of privacy under section 21(1)(f), I must consider whether any of the factors under section 21(2) apply.

The PGT argues that two section 21(2) factors (paragraphs (e) and (f)) weighing against disclosure apply, while none of the section 21(2) factors favouring disclosure applies. The appellant takes the position that those two factors do not apply, but that the factors in section 21(2)(a) and (c) weigh in favour of disclosure. Sections 21(2)(a), (c), (e) and (f) 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;
>
> (c) access to the personal information will promote informed choice in the purchase of goods and services;
>
> (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
>
> (f) the personal information is highly sensitive;

Section 21(2)(a): public scrutiny

The appellant takes the position that this factor applies in favour of disclosure, as the disclosure of the information would permit the public to monitor the efficiency of the PGT's administration of estates. He also refers to the 1999 Report of the Provincial Auditor which, in the appellant's view, supports the position that public scrutiny is desirable.

In my view, section 21(2)(a) is not a relevant factor in this appeal. I am not persuaded on the basis of the appellant's representations that the disclosure of the records at issue is desirable for the purpose of subjecting the activities of the PGT to public scrutiny, particularly in light of the nature of the information requested, and the specific time period covered by the records at issue in this appeal.

Section 21(2)(c): promote informed choice in the purchase of goods or services

The appellant takes the position that section 21(2)(c) is a factor because, as an alternative to the PGT administering an estate, the appellant provides a viable alternative choice for beneficiaries. The appellant submits that these beneficiaries are free to engage the services of the appellant for a mutually acceptable fee, or to decline the involvement of the appellant. The appellant states:

> Those who accept the offer of assistance benefit from the … services [the appellant] provides. Those beneficiaries who decline the offer of assistance have nonetheless benefited from [the appellant's] efforts, as they have been notified of a potential entitlement and are able to make their own arrangements to claim their inheritance.

The appellant then refers to a quotation from Order PO-1790-R, in which Senior Adjudicator Goodis identified the benefits to having additional resources, outside the PGT, directed towards locating potential heirs.

Based on the representations of the appellant, I am not persuaded that this factor is relevant in this appeal. Although the appellant's representations refer to the "viable choice" provided to beneficiaries if the personal information is disclosed, the appellant's arguments in support of this position concern the "benefits" of identifying, locating and notifying unknown heirs. These considerations are addressed under the unlisted factor of "benefits to unknown heirs" set out below.

With respect to the appellant's position that providing him with the information would allow him to approach the beneficiaries and provide his services, Assistant Commissioner Tom Mitchinson addressed this issue in Order P-309. That appeal arose as a result of a request made to the Ministry of Consumer and Commercial Relations for a list of the names and addresses of all babies born in Ontario in a given year. The requester took the position that the disclosure would promote informed choice of goods and services under section 21(2)(c). The Assistant Commissioner rejected the requester's claim and stated:

> In my view, section 21(2)(c) is not intended to create an exception to the mandatory personal information exemption for the purpose of making mailing lists available to the public for marketing purposes.

I agree with the position taken in P-309. Other than the possible benefit of locating unknown heirs, which is dealt with under the "unlisted factor" set out below, the appellant's reliance on section 21(2)(c) is based on his position that he can use the information at issue to offer his services to beneficiaries. Section 21(1)(c) does not apply in these circumstances.

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

In support of this factor, the PGT refers to an affidavit sworn by a PGT employee with direct knowledge of the policies and practices of the PGT in relation to searches for heirs. The PGT states:

> This factor is highly relevant in this appeal. The affidavit … sets out the grounds for the [PGT's] position that disclosure of the record *for estates which have not yet been the subject of a formal application filed in the public records of the Ontario Court of Justice*, is reasonably likely to interfere with the [PGT's] fiduciary duty to identify and locate the heirs, to provide full disclosure, to advise them of their right to administer the estate, and to offer them a choice of estate trustee . . . [T]he requester's commercial interest in the record (as opposed to a personal interest), demonstrates that pecuniary harm will result from disclosure of the record. Since the appellant is in the business of locating heirs for a percentage of their share of the estate, the appellant performs services for a higher fee which the [PGT] already performs as part of its functions as estate trustee.
>
> The eighteen months of privacy protection asserted by the [PGT] is essential to protect the rights and financial interests of the potential beneficiaries and is a reasonable period of time for which to protect these interests from disclosure to a third party with a personal commercial interest.

The PGT then reviews its obligations, as set out in the *Crown Administration of Estates Act*, to administer certain intestate estates in Ontario. It reviews the requirements imposed on the PGT under that legislation, including the obligation to administer the estate, identify and locate beneficiaries and distribute the estate to the beneficiaries. The PGT also identifies its decision-making process in terms of making an application to court to be appointed estate trustee:

> Prior to making the court application, the [PGT] commences its search for heirs for two purposes:
>
> (i) To offer heirs the option of administering the estate themselves or through a nominee. The office regularly turns over the administration of estates to heirs after a very low-cost search. The next-of-kin of the deceased have a prior entitlement in law to administer the estate, ahead of the [PGT]. Accordingly, if next-of-kin want to administer the estate, the [PGT] does not apply to court to be appointed Estate Trustee.
>
> (ii) If the heirs do not wish to administer the estate or nominate someone in Ontario to administer the estate, to obtain their agreement to the [PGT's] application as estate trustee.

> If no heir is found who is willing to administer the estate, the [PGT] files an application to the court to be appointed Estate Trustee, under the following circumstances:
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> 1. Where searches have proven fruitless after a reasonable period of time and expense, and further delay is no longer justified in relation to the need to administer the estate;
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> 2. Where the estate is too small to justify the cost of a full search;
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> 3. Where a certificate is required quickly in order to safeguard the deceased's assets; or
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> 4. With the consent of the next of kin who have been located and who do not wish to nominate another person to administer the estate on their behalf.

The PGT then says that it continues to search for heirs after being appointed estate trustee, consistent with its duty as such, and that it "often finds the heirs within months of being appointed."

Following this review of the process of making an application to court, the PGT reviews the steps it goes through in fulfilling its duties as estate trustee. It identifies the obligations it undertakes in that role, and the benefits to heirs that, in the PGT's view, the PGT's role as estate trustee confers on the heirs. These benefits include assistance with paperwork and research, full disclosure of all fees and relevant estate information, and minimal costs to the estate.

The PGT contrasts its actions with that of heir tracers, who it identifies as "being in the commercial business of locating beneficiaries of estates for a percentage fee." The PGT takes the position that these heir tracers owe no fiduciary duty to the estate, place priority on searching for heirs of larger estates, and may not provide full disclosure of relevant information prior to having heirs sign irrevocable agency agreements.

As well, the PGT takes the position that concurrent searches for heirs will result in a loss to the estate (and therefore the beneficiaries) as the PGT will incur costs in searching for heirs because it is statutorily obliged to do so, notwithstanding that the heir tracer may also be searching for the heirs.

In conclusion, the PGT submits that disclosure will:

> … cause pecuniary or other harm to heirs in that it will result in paying twice for the same services, to the [PGT] and up to 50% [of the value of the estate] to an heir tracer, at the expense of the beneficiaries of the estate. By the access request, the heir tracer seeks to obtain the information before the court application is

> made. The timing of disclosure is crucial to the protection of the privacy rights of the deceased and the heirs. The short window of time before the application to court is made, allows the [PGT] to comply with its legal duty to find a relative of the deceased willing to administer the estate, instead of the PGT, and it prevents the heir tracers from interfering with the [PGT's] duty to locate heirs, at substantially less cost to the estate, during that time.
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> The [PGT's] policy of searching for heirs prior to making application to court serves the public interest in ensuring that estates are distributed to the rightful heirs at minimal cost. As a result of this policy, the vast majority of estates are distributed directly to the heirs and not through heir tracers.
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> . . . [A] pecuniary harm to the heirs of the estate is in effect a pecuniary harm to the estate itself … pecuniary harm is suffered by the estate and its beneficiaries where they are required to pay an agent's fee to perform the function of the estate trustee to locate the heirs of the estate. This pecuniary harm is exacerbated where the estate trustee itself has already incurred expenses to identify and locate the heirs of an estate.
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> The [PGT] complies with the terms of Order PO-2012-R which in effect, ordered the disclosure of a list of names only of estates opened 18 months or more before the date of the Order, exceeding a specified dollar value. By 18 months after death, the [PGT] has filed an application to the court in all estates which it plans to administer, and has had sufficient and reasonable opportunity to locate the heirs.

Not surprisingly, the appellant takes issue with the PGT's position on whether the factor of "pecuniary or other harm" is relevant. He submits that this position was considered and specifically rejected by Senior Adjudicator Goodis in Order PO-1790-R, and identifies the following quote from that order, where Senior Adjudicator Goodis stated:

> *In my view, the PGT has not established that disclosure in accordance with my Order PO-1736 will cause pecuniary or other harm to potential heirs for the purpose of section 21(2)(e) or otherwise under section 21.* The PGT admits that "because the [PGT] has legitimate access to the personal papers of the deceased and to various sources of pertinent information, we are in most cases able to locate the heirs and assist them with their documentation, far more quickly than would an heir tracer." This statement undermines the PGT's submission that if the information is disclosed in accordance with the order, heir tracers such as the appellant will be able to locate potential heirs sooner than the PGT would, thus resulting in the heirs being charged a greater fee. Further, the PGT indicates that while it had difficulties in the past locating heirs, its "skills and ability to search [for potential heirs] have greatly increased even in the past two years …" I am not persuaded based on the material before me that there is a serious risk of Order

> PO-1736 resulting in a substantial number of heirs being located by heir tracers who otherwise might have been located first by the PGT.
>
> *In addition, the PGT has not satisfied me that the circumstance of an heir tracer locating and seeking a contractual arrangement with a potential heir would constitute pecuniary or other harm. I accept the appellant's submission that potential heirs are free to either reach an agreement with an heir tracer, or not.* [appellant's emphasis]

The appellant also refers to Assistant Commissioner Tom Mitchinson's Order PO-1936, in which the Assistant Commissioner states:

> As far as the heirs or potential heirs are concerned, I accept that in circumstances where an estate has not escheated to the Crown, heirs or potential heirs could be contacted by the PGT, private heir tracers and/or a consulate, and that different fees could be involved, depending on circumstances. However, based on the appellant's representations in this case, *I am not persuaded that any fees charged by his client in this regard would expose any heirs or potential heirs to pecuniary or other harm or, more particularly, that any such exposure would be unfair.* Accordingly, I find that section 21(2)(e) is not a relevant consideration in this appeal. [appellant's emphasis]

The appellant has also provided substantial additional information in which he disputes the PGT's position on the various costs that may apply. He submits that the costs incurred by the estate in circumstances where the PGT is involved are higher than those identified by the PGT. He also asserts that the costs are lower than those identified when he is involved as an heir tracer, and that the benefits to the heirs are greater, as he provides more assistance to heirs than the PGT does.

The PGT did not respond to these submissions of the appellant.

In my view, the section 21(2)(e) factor is not relevant in the circumstances of this appeal.

Both parties have provided substantial information in support of their respective positions on the harms that will or won't accrue to the estate if the information is disclosed.

However, Senior Adjudicator Goodis specifically rejected the notion that section 21(2)(e) applied to this type of information in his Order PO-1790-R (see above).

The information requested in this appeal is the client name, client address, last occupation, place of death and date of death. This is identical to the information ordered disclosed in Order PO-1790-R. The PGT was provided with a copy of the representations of the appellant, in which he specifically refers to this portion of Order PO-1790-R, and the PGT chose not to respond to it. In my view, since the PGT has "legitimate" access to the personal papers of the deceased, I agree

that the PGT is in a more advantageous position to locate heirs. I find further support for this in the PGT's own representations provided to me, which identify an increasing expertise and speed in locating heirs.

In any event, even if the disclosure of the information would result in heir tracers being given the opportunity to locate heirs concurrent with the PGT, I am not persuaded that this would result in pecuniary or other harm. In Order PO-1936 Assistant Commissioner Mitchinson rejected the notion that, because heirs or potential heirs could be contacted by the PGT, private heir tracers and/or a consulate, and because different fees could be involved, that this would expose any heirs or potential heirs to pecuniary or other harm, or that any such exposure would be unfair. I agree with the position taken by Assistant Commissioner Mitchinson.

Finally, in light of the finding set out below, in my view any possibility of this factor applying to this information is further negated, given the one-year opportunity the PGT may have in processing the file prior to any personal information being disclosed. In circumstances where the PGT might only receive the file over one year after the date of death, and where the information at issue is therefore available to others, I do not find that this would result in any pecuniary or other harm, for the reasons set out above.

Section 21(2)(f): highly sensitive

The PGT takes the position that the disclosure of this information, which, in the PGT's view, could lead to the loss of up to 50% of the estate at the expense of the heirs, can be "assumed to be contrary to the wishes of the deceased persons and likely to have caused them extreme distress if they had known while they were alive of the possibility that this information could be released to a person in the business of locating heirs for a fee."

Previous orders of this office have repeatedly identified that the type of information at issue in this appeal is not "highly sensitive" [see Orders PO-1717, PO-1736, PO-1822, PO-1936]. I similarly find that the information at issue (the deceased's name, address, date of death, place of death and occupation) is not "highly sensitive" for the purpose of section 21(2)(f).

I do not consider section 21(2)(f) to be a relevant factor in this appeal.

Unlisted factor: diminished privacy interest after death

Both the PGT and the appellant provide substantial representations on this unlisted factor.

The PGT states:

> This "unlisted factor" has been applied in a number of decisions involving estates administered by the [PGT]. The [PGT] submits that it should not apply when the information concerns a person who has been dead for 18 months or less.

The PGT takes issue with previous decisions of this office that applied this "unlisted factor", arguing that the *Act* clearly did not intend this unlisted factor to be recognized, based on its definition of "personal information" as including information until 30 years after the date of death. In the circumstances, I am not persuaded that I should depart from previous decisions of this office (including Orders M-50, PO-1715, PO-1735, PO-1736 and PO-1936), as well as the judgment of the Divisional Court upholding Order PO-1736.

In the alternative, the PGT states:

> Even if this unlisted factor is applied by the IPC, which the [PGT] submits it should not, then the [PGT] submits that it does not apply in this appeal because the individuals identified in the record have only been dead for less than 18 months prior to the date of the request. This is distinguished from cases where the deceased has been dead for over 10 years and the estate has escheated to the Crown. In this case, given the recent dates of death, the fiduciary duty on the [PGT] as estate trustee to search for next-of-kin who have a prior right to administer the estate, and/or who may be heirs to the estate, the [PGT] submits that the deceased's privacy rights have not been diminished by their death. This is particularly so given the appellant heir tracer's commercial purpose for the access request, the lack of clear benefit to the heirs in disclosing the record, and the potential significant harm to the heirs.

The PGT's position set out above appears to be referring to a number of factors and the weighing of these factors, as opposed to addressing whether or not there exists a diminished privacy interest after death; however, the PGT seems to be stating that the diminished privacy interest is not as great during the first 18 months as it may be after a longer period of time.

The appellant refers to Orders PO-1717 and PO-1936 in which Assistant Commissioner Mitchinson concluded that a reduction in privacy interests after death was a relevant factor in determining that information similar to that requested in this appeal should be disclosed. The appellant then states:

> In the present case, [the appellant] is requesting the disclosure of information that is not highly sensitive and in circumstances where, it has been consistently held there is a reduction in the privacy interests of the deceased individual. The [PGT] is resisting disclosing this information *only* for cases that it has administered for less than eighteen months. … [The appellant] submits that this timeframe is an arbitrary limitation imposed by the [PGT] without sound basis in the Act, other legislation or previous decisions ...

Assistant Commissioner Mitchinson recently considered whether the "diminished privacy interest after death" factor applies where an individual had been dead for less than 12 months. In Order PO-2240, he first reviewed his findings that there existed a diminished privacy interest after death in PO-1717 and PO-1936. He then stated:

> In the current appeal, the deceased died on December 3, 2002, less than four months before the appellant submitted his request to the [PGT] 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 accept the approach taken by Assistant Commissioner Mitchinson in applying the unlisted factor of a "diminished privacy interest after death." As established in Order PO-2240, I do not attribute any significant weight to this unlisted factor for at least the first year following death.

However, after one year following the date of death, I find that this factor is to be attributed weight of some significance. In Order PO-1736 (upheld by the Divisional Court), Senior Adjudicator Goodis had to decide whether this factor applied where, at the time of the request, the deceased individual had been dead for approximately two years. He found that the factor of "diminished privacy interest after death" did apply, although he decided that the privacy interests of the deceased individuals were "moderately reduced" in those circumstances.

Based on the previous orders of this office, and on the representations of the parties, it is my view that the unlisted factor of a "diminished privacy interest after death" is a factor that applies upon the death of the individual to whom the information relates. However, I find that it is not to be attributed any significant weight for the first year following death, but that after that time, it should be accorded moderate weight.

Unlisted factor - benefit to unknown heirs

Both the PGT and the appellant provide substantial representations on this unlisted factor.

The PGT states:

> The unlisted factor of "benefit to unknown heirs" has been applied by the IPC in Orders PO-1717 and PO-1936. The [PGT] submits that this factor is not applicable to this request, since no "benefit to unknown heirs" can be established by the requester with respect to access to information in advance of it being filed with the Court. Since the [PGT] provides the same services at minimal cost, which is part of its fiduciary duty as estate trustee, it is the position of the [PGT] that there can be no "benefit to unknown heirs" to disclose personal information where the deceased died ... recently …

> Order PO-1717 and other orders decided prior to the year 2000, deal with *escheated* estates, where the deceased had been dead for over 10 years and the [PGT] had ceased searching for heirs. (An escheat does not occur before 10 years following the date of the death of the deceased.) These situations are clearly distinguishable on the fact of the year of death of the deceased and the fact that the estates had escheated to the Crown.
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> However, in the current case, a significant number of deceased individuals have only been dead since December 2000 at the earliest, and the [PGT] as estate trustee is actively searching for heirs, with an excellent record of locating them in less than 18 months. If the [PGT] is not given a reasonable chance of finding heirs, they are at considerable risk of losing up to 50% or more of their inheritance. Disclosure of this record *at this juncture of administration of the estate* would clearly not benefit the unknown heirs.
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> The Assistant Commissioner in Order PO-1936 describes the identification of unknown heirs as "an important policy objective." It is submitted that there can be no benefit to unknown heirs for them to enter into a fee for service contract with an heir tracer if the services are not required. The [PGT] concedes that services might become beneficial if the [PGT] as estate trustee was unsuccessful in identifying the beneficiaries within 18 months of the date of opening the file. However, that is not the case in this request.
>
> Furthermore, even if the heirs were located by heir tracers in the immediate weeks after the death, they would not necessarily receive funds more quickly than if found a few weeks later by the [PGT]. Section 26 of the *Estates Administration Act* . . . prohibits any distribution to any heir to an intestate estate, until after one year from the date of death. Consequently, there is no benefit to unknown heirs from the disclosure of information about the estate in the months immediately after the death and before the [PGT's] Application to be appointed estate trustee is filed with the court.

The appellant takes a different position on the possible application of this unlisted factor. He first reviews the various orders of this office that have established that this unlisted factor is relevant in situations involving locating rightful heirs to an estate. He then states:

> In the present case, the [PGT's] refusal to disclose the requested information until at least 18 months have passed since it began its administration on an estate is based on its contention that it should have a first chance to locate heirs. The [PGT's] rationale for this "first chance" argument is that the involvement of a service provider … necessarily involves loss and harm to the estate, because of the fee for its services. Given the previous decisions of the [IPC] with respect to pecuniary harm, . . . this argument is without merit. As this failed argument appears to form the foundation of the [PGT's] insistence that it receive an 18-

> month window to search for heirs without the assistance or involvement of the [the appellant], the 18-month time-frame should be rejected as arbitrary and not founded in the *Act* or its proper interpretation.
>
> The fact is that disclosure of the requested information to [the appellant] increases the possibility of locating rightful heirs who might otherwise remain unknown. The above-referenced Orders establish that this is a relevant factor favouring disclosure.
>
> The [PGT] argues that, because section 26 of the *Estates Administration Act* prohibits distribution to any heir to an intestate estate until one year from the date of death, there can be no benefit from disclosure of information before this time period has passed. The fact is that there is a significant amount of work, including locating heirs and preparing the necessary documentation, that can be completed during this initial 12-month period. If these steps are completed, distribution can be effected as soon as possible after the twelve months have elapsed. The services provided by [the appellant] can assist this process and therefore benefit the heirs (by ensuring that they are found and receive their inheritance), the [PGT] (by assisting in reducing its workload and increasing its success rate) and the public (by reducing the strain on tax revenues).

The appellant also includes with his representations substantial information in support of his position, including a summary of 20 perceived benefits if the information is disclosed to the appellant. One of these is set out as follows:

> The [PGT] admits that a benefit to unknown heirs could take place if the appellant had access to the information requested after 18 months from the date of the death of the deceased. Previously the [PGT] conceded that a benefit to unknown heirs could take place if the appellant had access to the information requested 10 years after the date of the deceased. Accordingly, the appellant submits that this benefit still exists when the appellant is provided with access to such information at 17 months or 12 months or one month from the date of death of the deceased. In fact the sooner the appellant has this information the sooner the beneficiaries can be helped to distribute this estate to the benefit of all parties including the unknown heirs, the [PGT], the IPC, and to the taxpaying public of Ontario.

Previous orders have established that this unlisted factor is a significant one in situations involving a request for information about estates where the heirs have not been located. In Order PO-1736, Senior Adjudicator Goodis referenced this factor, and cited previous orders in favour of applying this factor in the circumstances of his appeal. He quoted from Order PO-1717, in which Assistant Commissioner Mitchinson said:

> 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.

Senior Adjudicator Goodis then stated:

> 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. (emphasis added)

I adopt the analysis set out above concerning the application of this unlisted factor.

However, in my view there are two considerations that limit the weight to be accorded the "benefit to unknown heirs" factor in the circumstances of this appeal. The first consideration, referred to by the PGT and refuted by the appellant, is the reference to section 26 of the *Estates Administration Act*. The PGT states that this section prohibits any distribution to any heir to an intestate estate, until after one year from the date of death. The PGT argues that "consequently, there is no benefit to unknown heirs from the disclosure of information about the estate in the months immediately after the death and before the [PGT's] Application to be appointed estate trustee is filed with the court."

The appellant states that, notwithstanding section 26 of the *Estates Administration Act*, there is a significant amount of work, including locating unknown heirs and preparing the necessary documentation, that can be completed during this initial 12-month period. He also states that, if these steps are completed, distribution can be effected as soon as possible after the twelve months have elapsed. He therefore submits that this benefit still exists at any time following the date of death.

I accept the appellant's position that the "benefit to unknown heirs" exists at any time following the date of death. In my view, the possibility of locating unknown heirs is increased depending upon the length of time that the unknown heirs are sought. However, in light of the prohibition

on distribution of the estate until one year following the date of death, I find that the weight of this factor is significantly reduced within the first year following the date of death.

In addition, although I do not accept the PGT's position that no "benefit to unknown heirs" can be established by the requester with respect to access to information in advance of it being filed with the Court, the PGT also states that it has "an excellent record of locating [heirs] in less than 18 months." The PGT has not provided me with statistics on precisely when and how much less than 18 months these heirs are successfully located, but I accept that the nearer to the date of death, the more likely it is that heirs will be located. In my view, this further reduces the weight to be given to the unlisted factor of "benefit to unknown heirs" in the months immediately following the date of death. I find support for this approach in the words of Senior Adjudicator Goodis in Order PO-1736, where he applies this factor and states:

> I … 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. (emphasis added)

In my view, the likelihood that the disclosure of information will result in individuals proving their entitlement to assets of estates *which they may not have been able to otherwise* increases as the time since the date of death elapses.

In reviewing the above, I find that the unlisted factor of "benefit to unknown heirs" is a relevant factor that applies upon the date of the death of the individual to whom the information relates. However, because of the combination of the two reasons set out above, I find that it is should not be accorded any significant weight for the first year following death, after which it should be accorded moderate weight.

Analysis of factors

As set out above, the record at issue consists of the Client Name; Client Address; Last Occupation; Place of Death; Date of Death, currently contained in the database, which relates to the estates of persons that have been under administration of the PGT for less than eighteen months.

The PGT takes the position that the records should not be disclosed to the appellant. It variously argues that the relevant factors in favour of privacy apply either 18 months from the date of death, 18 months from when the file came to the attention of the PGT, or 18 months from when the file was opened by the PGT. Overriding these arguments appears to be the PGT's concern that information would be disclosed to others to the detriment of the estate if the information were disclosed prior to the PGT filing a court application to administer the estate. Its strongest statement on the relationship between these times is:

> By 18 months after death, the [PGT] has filed an application to court in all estates which it plans to administer, and has had sufficient and reasonable opportunity to locate the heirs.

In terms of my analysis of the factors found in section 21(2), I find that the dates upon which the file did or did not come to the attention of the PGT, was opened by the PGT, or the date upon which the application is made to the court, have no relevance to these factors. In my view, the only relevant date for the purpose of this appeal, in deciding whether the disclosure of the records would constitute an unjustified invasion of the personal privacy of the deceased, is the date of death of the deceased individual.

With respect to the application of the factors in section 21(2), I have found that that none of the listed section 21(2) factors referred to by either the appellant or the PGT apply in the circumstances. I also find that none of the remaining listed factors applies. The only factors that apply in the circumstances are the unlisted factors of "diminished privacy interest after death" and "benefit to unknown heirs"; however, I have found that neither of these unlisted factors carries significant weight until after one year after the date of death of the deceased.

Based on the above, and based on Order PO-1736, it is clear that the information at issue is the personal information of the deceased individual. As well, disclosure of this personal information (being the deceased's name, address, date of death, place of death, and occupation), absent any factors favouring disclosure, would constitute an unjustified invasion of personal privacy of the deceased individuals. Accordingly, prior to one year following the death of the deceased, I find that the disclosure of the information, in the absence of any factors favouring disclosure, would constitute an unjustified invasion of the privacy of the deceased individuals.

However, following one year after the date of death, the two unlisted factors of "diminished privacy interest after death" and "benefit to unknown heirs" take on moderate weight in favour of disclosure. I find that the combination of these two factors at that time are sufficient to lead to the conclusion that disclosure would *not* constitute an unjustified invasion of personal privacy within the meaning of section 21(1)(f). Accordingly, where the personal information relates to individuals who, at the time of the request, have been deceased for greater than one year, that information is *not* exempt under section 21 of the *Act*.

ORDER:

1. I order the PGT to disclose to the appellant the requested categories of information contained in the record for all individuals whose date of death is greater than one year from the date of the request, by **May 5, 2004**.

2. I uphold the PGT's decision to deny access the requested categories of information contained in the record for all individuals whose date of death is one year or less from the date of the request.

3. In order to verify compliance, I reserve the right to require the PGT to provide me with a copy of the record that is disclosed to the appellant pursuant to Provision 1, upon request.

Original signed by: April 14, 2004
Frank DeVries
Adjudicator