

ORDER PO-2298

Appeal PA-020276-1

Office of the Public Guardian and Trustee

NATURE OF THE APPEAL:

The Office of the Public Guardian and Trustee (the PGT) received a request under the *Freedom of Information and Privacy Act* (the *Act*) for a copy of the entire file for 14 named deceased individuals (PGT file numbers 2741 to file 2754). The PGT and the appellant agreed that the PGT would process each requested file separately.

With respect to one of the identified individuals, the PGT issued a decision advising that access to all responsive records was denied pursuant to section 13 (advice or recommendations) and section 21(1) (invasion of privacy) with reference to sections 21(3)(a) and 21(3)(f).

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

During the mediation stage the PGT identified the specific records for which section 13 was claimed. The PGT also confirmed that it was relying on section 21(1) to deny access to all of the records. Furthermore, it referred to section 21(3)(d) as an additional presumption that applied to certain records.

Mediation did not resolve this appeal and it was transferred to the inquiry stage of the process. I sent a Notice of Inquiry to the PGT, initially, and received representations in response. I then sent the Notice of Inquiry, together with a copy of the PGT's representations, to the appellant, who also provided representations.

RECORDS:

There are 63 pages of records at issue in this appeal. They include correspondence, file processing documents, notes to file, and bank account and financial records.

The PGT takes the position that section 21(1) applies to all of the records, and that section 13(1) applies to pages 9, 28-30 and 32-34.

DISCUSSION:

PERSONAL INFORMATION

The section 21 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 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 PGT submits that the records contain personal information, and has identified over 20 different categories of personal information contained in the records relating to the deceased individual. These categories include specifics concerning the birth, life, addresses, employment, identifying numbers (including Social Insurance numbers and Health Card number), medical information, assets, financial dealings, other information from government record depositories and information concerning the death of the deceased. The PGT takes the view that all such records fall within the definition of “personal information” contained in section 2(1) of the *Act*.

Furthermore, the PGT identifies that some of the records also contain information about third parties, including individuals who were friends of the deceased, or individuals who were employed or worked for third party organizations such as financial institutions.

The appellant concedes that much of the information may qualify as personal information as defined by section 2(1) of the *Act*.

In my view, the information contained in the records constitutes the personal information of the deceased, as identified by the PGT. In addition, some information constitutes the personal information of other identifiable individuals, such as the friends of the deceased. However, information relating to the people who worked for the financial institutions referred to in the records does not constitute the personal information of those individuals, unless there is a “personal” element to the information (see Order MO-1180). Information relating strictly to these individuals in their professional capacity is not their personal information.

Accordingly, I find that the records at issue contain the personal information of the deceased, and that some of the records also contain the personal information of other identifiable individuals.

Section 2(2) of the *Act* states:

Personal information does not include information about an individual who has been dead for more than thirty years.

The deceased died in the year 2000, so section 2(2) has no application to his personal information. I also have nothing to indicate that any of the other individuals whose personal information is contained in the records has been dead for more than 30 years.

INVASION OF PRIVACY

Where an appellant seeks 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.

Section 21(1)(c) - public record

The appellant submits that the information at issue is not exempt due to the application of the exception at section 21(1)(c) which reads:

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

personal information collected and maintained specifically for the purpose of creating a record available to the general public;

The appellant takes the position that the personal information contained in the records is used to prepare a Certificate of Appointment of Estate Trustee (CAET), which is a document that has previously been made available to the public. On this basis, the appellant submits that much of the information is the same information which will be publicly available.

The appellant also states that access to the information contained in the CAET is publicly available, and used to be easily accessible, but that access to such records is now more difficult for parties such as the appellant. The appellant refers to the difficulties he has encountered in accessing these documents due to both the excessive fees involved, and the actions of the PGT.

Previous orders have stated that in order to satisfy the requirements of section 21(1)(c), the personal information must have been collected and maintained specifically for the purpose of creating a record available to the general public (for example, Order P-318). With respect to the specific types of records at issue in this appeal, Senior Adjudicator Goodis examined this issue 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.)). He dealt with submissions similar to those advanced by the appellant in this appeal. Although he accepted that information of the nature requested had been available in cases where the PGT files certain documents with the Superior Court of Justice, and that, as a result, certain information is made available to the public, he did not accept that section 21(1)(c) applied to the information at issue. He stated:

In my view, disclosure of information of the nature requested in some cases in this way is not sufficient to meet the threshold under section 21(1)(c). First, the PGT itself does not make this information available to [the] public directly; this disclosure is made by the courts. Second, the PGT is under no statutory requirement to make the requested information available to the public directly, under the [*Public Guardian and Trustee Act* (the *PGTA*)] or under any other legislation. In fact, as the PGT points out, the PGT under section 18 of the *PGTA* has a duty not to disclose information of the type requested, unless one of the exceptions in that provision applies.

On the basis of the above, Senior Adjudicator Goodis concluded that the requested information was not collected or maintained specifically for the purpose of creating a record available to the general public under section 21(1)(c) of the *Act*.

I agree with the approach taken by the Senior Adjudicator in Order PO-1736. In my view, the records at issue in this appeal were not collected or maintained specifically for the purpose of creating a record available to the general public under section 21(1)(c) of the *Act*. Accordingly, section 21(1)(c) does not apply.

Section 21(1)(f) – unjustified invasion

In this case, the PGT claims that disclosing the records would constitute an unjustified invasion of the personal privacy of the deceased and the other individuals identified in the records, pursuant to section 21(1)(f). This section 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 personal 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 personal 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 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)

The PGT relies on the presumptions contained in sections 21(3)(a), (d), (e) and (f) 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;
- (d) relates to employment or educational history;
- (e) was obtained on a tax return or gathered for the purpose of collecting a tax;
- (f) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;

The PGT then identifies specifically the records which it considers fit within the presumptions set out above.

The appellant seems to concede that certain records may contain information which falls within one of the presumptions in section 21(3) of the *Act*. However, he states that he “seeks only those that contain information that will be of use to him in locating the family of the deceased.”

I will review the application of the presumptions for the records for which they are claimed.

Section 21(3)(a)

The PGT states:

Record 47 is a hospital admission record. It clearly relates to the medical evaluation, condition, diagnosis and treatment of the deceased. It is therefore in its entirety a presumed unjustified invasion of personal privacy ...

I agree, and find that Record 47 falls within the section 21(3)(a) presumption of an unjustified invasion of privacy.

Section 21(3)(d)

The PGT states:

Records 24 and 61 provide information about previous occupation and employment of the deceased. In accordance with Orders P-216 and P-240, these records in their entirety are therefore a presumed invasion of personal privacy.

Record 24 is a document entitled "Heirship Information" and it contains a variety of information relating to the deceased. Record 61 is an affidavit sworn by the deceased for other purposes. Both of these records contain information that relates to the previous occupation of the deceased; however, upon my review of these records, I am not satisfied that they contain the type of detailed information about the "employment history" of the deceased to fit within the presumption in section 21(3)(d). The information relating to the occupation of the deceased and the location of the occupation is of a general nature, without reference to specifics, and I am not satisfied that it fits within section 21(3)(d).

Section 21(3)(f)

The PGT takes the position that 46 identified records fit within the presumption in section 21(3)(f), and that disclosure of these records would be a presumed invasion of personal privacy. It identifies that records relating to the deceased's bank and financial account information (Records 1, 5, 6, 10-17, 50-57), and records containing other information identifying the deceased's assets or liabilities (Records 2, 3, 4, 7, 8, 24, 28-30, 32-34, 36-46, 58 and 59) all fit within the section 21(3)(f) presumption.

I have reviewed the records referred to by the PGT and am satisfied that they contain information relating to the deceased's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness. Most of the records specifically contain financial information relating to the deceased and, in my view, the whole record fits within the presumption in section 21(3)(f). Some of the records, however, only contain a small amount of information of the type contained in 21(3)(f). Upon my review of the records, only one item in Record 24 (the item identifying the net estimated value of the estate) is information which fits within section 21(3)(f). Regarding the other records which the PGT claims fall within section 21(3)(f), I am satisfied that they fit within the presumption in that section, and that their disclosure would constitute a presumed unjustified invasion of privacy.

I am also satisfied that the records which the PGT claims fall within the presumption in section 21(3)(e) also fall within the presumption in section 21(3)(f). I have already found that Records 11, 12, 16 and 17 (T5 slips issued by a financial institution) and Records 10, 13 and 15 (documents prepared for the purpose of preparing the estate's income tax return) fit within that presumption. In my view, Records 18, 19 and 20 also describe the deceased's finances, income, assets, liabilities and/or financial history or activities. Accordingly, they also fit within the

presumption in section 21(3)(f) and their disclosure would be a presumed invasion of personal privacy.

Having found that these records fit within the section 21(3)(f) presumption, it is not necessary for me to determine whether some or all of them might also fit within 21(3)(e).

In summary, I have found that Records 1-8, 10-20, 28-30, 32-34, 36-47, 50-59 and one item on Record 24 fit within either section 21(3)(a) or 21(3)(f), and that their disclosure would be presumed to constitute an unjustified invasion of the personal privacy of the deceased. 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). Accordingly, this information qualifies for exemption under section 21 of the *Act* and should not be disclosed.

Section 21(2)

The information which does not qualify under section 21(3), and remains at issue, consists of information contained on Records 9, 21-23, 25-27, 31, 35, 48, 49, 60, 61-63 and the remaining portions of Record 24. These include records relating to the day-to-day administration of the estate file, the deceased individual's social insurance and health card numbers, and other documents, correspondence or notes created by or for the PGT in the context of administering the estate.

The PGT takes the position that the factors in section 21(2)(e), (f) and (h) apply. The appellant takes the position that the factor in section 21(2)(c) applies, and that the unlisted factors of "diminished privacy after death" and "benefit to unknown heirs" apply in favour of disclosing the information in the records. The relevant sections read:

- (2) 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,
- (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;
 - (h) the personal information has been supplied by the individual to whom the information relates in confidence;

A number of previous orders have reviewed the application of the factors under section 21(2) (including the unlisted factors referred to by the appellant and disputed by the PGT) for information in a file held by the PGT. I have had reference to the reasoning and analysis set out in those orders in deciding the issues in this appeal, in particular Orders PO-1736, PO-1936 and PO-2260.

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. After identifying what the appellant perceives as the benefits of providing competition in the search for heirs, the appellant submits:

In its submission the [PGT] suggests that correspondence from individual third parties known by and related to the deceased should also be protected. The appellant submits that it is this very information that should be released in order to enable the lawful beneficiaries of the deceased to be identified and notified of their rights and assisted accordingly.

... providing access to such information would be used by the beneficiaries of the estate to facilitate the estate's proper and efficient administration.

This position is similar to the one raised by the appellant in Order PO-2260. In that order I stated:

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 agreed with the position taken in P-309, and found that section 21(2)(c) did not apply in the circumstances.

I adopt the same approach to this issue in this appeal. 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(2)(c) does not apply in these circumstances.

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

The PGT has identified section 21(2)(e) as a factor in favour of privacy protection in this appeal, and has submitted that disclosure of information contained in the records "... will cause pecuniary or other harm to heirs in that it will result in paying twice for the same services." The PGT identifies that it is required to conduct searches for possible heirs, at the expense of the estate, and in the event that the appellant engages in a similar search, additional expenses will be incurred at the expense of the estate (if the appellant were to enter an agreement with any heirs that he might locate).

Both Order PO-1936 and PO-2260 addressed the application of this factor in similar circumstances. In Order PO-1936 Assistant Commissioner Mitchinson stated:

The parties have submitted conflicting representations on this factor. Based on the material before me, I do not accept that this factor is applicable to the remaining information that relates to the deceased individual. As far as the heirs or potential heirs are concerned, I accept that in circumstances where an estate has not escheated to the Crown, that 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.

I adopted this approach in Order PO-2260, and also adopt it for the purpose of this appeal. In my view, based on the representations of the parties and the previous orders cited, section 21(2)(e) is not a relevant factor in this appeal.

Section 21(2)(f) - highly sensitive

The PGT takes the position that this factor is a relevant one favouring non-disclosure of the records.

In order for section 21(2)(f) to apply, the disclosure of the information at issue must reasonably be expected to cause excessive personal distress to the individuals in question (Orders M-1053, P-1681 and PO-1736). This factor has been found to apply, for example, to information about professional misconduct (Order M-1035) and in circumstances involving allegations of workplace harassment (Order P-685).

I have earlier found that the presumptions in section 21(3) apply to a number of the records at issue. Of the remaining records, it is my view that, in the circumstances of this appeal, none of this information can be considered “highly sensitive” for the purpose of section 21(2)(f), and this factor does not apply to the remaining personal information.

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

Section 21(2)(h) requires that the personal information be supplied by the individual to whom it relates in confidence. The PGT takes the position that much of the information was supplied to it in the context of the investigation of the deceased’s estate, and that there was an expectation of confidentiality when the information was provided.

However, in my view, the section 21(2)(h) factor does not apply to much of this information. Section 21(2)(h) states that this is a factor when “the personal information has been supplied by the individual to whom the information relates in confidence”. In this appeal, the PGT became involved in this matter following the death of the deceased. The information was not supplied to the PGT by the deceased.

Accordingly, I find that none of the information at issue in this appeal was supplied to the PGT by the deceased. Most of the other information was also obtained by the PGT through the course of administering the deceased's estate and not from the individuals to whom it relates. Subject to one exception, there is no basis in the circumstances for a finding that any of it was supplied in confidence by the deceased or any of the other individuals to whom it relates.

The exception is the information contained on the pages of the record which contain the information received from a federal government agency (information contained on Records 61-62). The PGT has identified that this information:

... was provided by a federal government agency from its records, which had received (this information) directly from the deceased when the deceased applied [to the federal agency] for a [benefit].

Based on the nature of these records and the circumstances under which they were created, I accept that the information on Records 61-62 was provided to a government institution by the deceased during his life, and that the deceased would have had a reasonably held expectation that the information provided would be kept confidential except when used for purposes connected to the application itself.

The PGT also takes the position that the information supplied to it by the funeral director in the statement of death (Record 63) was explicitly provided on a confidential basis to an estate representative. The PGT refers to section 48 of the *Funeral Directors and Establishments Act* in support of its view that the funeral director would have supplied that information in confidence. However, as set out above, the personal information contained in this record relates to the

deceased, and was not supplied by the deceased. Therefore, the factor in section 21(2)(h) has no application to Record 63.

Unlisted Factor - diminished privacy interest after death

The factors listed in section 21(2) are not exhaustive. Unlisted factors may also be relevant, depending on the particular circumstances of an appeal. One such unlisted factor is the possible “diminished privacy interest after death”. I recently applied this unlisted factor to five categories of information in Order PO-2260. In that order I stated:

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.

The appellant and the PGT have taken opposing views on the application of this factor. The appellant asserts that it is a relevant factor, and the PGT takes the position that it is not, based on its view that previous orders applying this factor are incorrect, and that, in any event, this factor should not apply in these circumstances where the deceased has died as recently as the year 2000.

In my view, based on numerous previous orders, this unlisted factor is a relevant factor. Furthermore, as more than one year has passed since the date of death, in my view, this factor is to be attributed moderate weight.

Unlisted factor - benefit to unknown heirs

Both the PGT and the appellant provide substantial representations on this unlisted factor, and again take opposing positions on its application in this appeal.

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 as recently as 2000.

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.

The appellant takes a different position on the possible application of this unlisted factor. He asserts that disclosure of the requested information to him increases the possibility of locating rightful heirs who might otherwise remain unknown, and refers to previous orders of this office in support of his position (Orders PO-1493, PO-1717 and PO-1936).

Again, I recently reviewed the application of this unlisted factor to five categories of records in Order PO-2260. After reviewing the representations of the parties and the previous orders in which this factor was applied, and adopting that approach, I stated:

... 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, ... I find that it should not be accorded any significant weight for the first year following death, after which it should be accorded moderate weight.

Applying similar reasoning to that followed in Orders PO-1717, PO-1736, PO-1923 and PO-2260, I find the possibility that disclosure of personal information about the deceased might result in individuals successfully proving their entitlement to assets of estates is a relevant factor favouring disclosure.

Considering the particular circumstances of this appeal and the contents of the specific records requested by the appellant, I find that the potential for disclosure of certain information contained on the "Heirship Information" form (Record 24) and the "Proof of Death Certificate" (Record 63) to assist individuals to prove their entitlement to the assets of an estate which they may not have been able to otherwise is a relevant factor. As identified in a number of previous orders, 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 date of death, place of death, age, date of birth, place of birth, marital status, occupation and place of occupation of the deceased, addresses, and the name of the deceased's father 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 and Assistant Commissioner in Order PO-1923 and PO-1936, 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, place of birth, age, marital status, addresses, and occupation information of the deceased, and to the name of the deceased's father; and not at all to the deceased's social insurance number, health number or other identifying numbers of the deceased.

Having reviewed the rest of the records, and in light of my decisions regarding the information contained on the Heirship Information and Proof of Death Certificate, I find that the "benefit to unknown heirs" factor is not a relevant consideration with respect to any personal information contained in the other records at issue in this appeal.

Analysis of Factors

I have made a number of findings concerning application of the factors (both those listed in section 21(2) and the unlisted factors referred to by the parties).

The PGT has provided representations regarding its view of the weighing of the factors. It states:

The requester's access request for the entire file of the administration of the estate, must be interpreted in light of the purpose of access to information. ... The requester's purpose in requesting access is solely for its own commercial interest.

The [PGT] further submits that in considering any weighting of factors, the IPC must directly consider that this request is for *all* the information in the file of an estate with a very recent date of death, which distinguishes this request from previous orders dealing with escheated estates. In the estates under current consideration in this request, the privacy interests of the deceased individual and his or her heirs should be paramount because of the relatively recent date of death.

Taking all representations and considerations into account, I have accorded the following weights to the various factors:

- *supplied in confidence* (section 21(2)(h)) - favours non-disclosure - moderate weight
- *diminished privacy interest after death* - favours disclosure – moderate weight for personal information of deceased; no weight for personal information of other individuals
- *benefit to unknown heirs* (only relevant to portions of Heirship Information and Proof of Death Certificate) - favours disclosure - high weight for deceased's date of death; moderate to high weight for the deceased's date of birth, place of birth, place of death, age, marital status, addresses, occupation information, and name of the deceased's father; no weight for the deceased's social insurance number and personal information of others; no weight for personal information contained in all other records

In balancing the various factors present in this appeal, I find that the factors favouring disclosure outweigh the factor favouring privacy protection for certain specific information contained on the Heirship Information (Record 24) and Proof of Death Certificate (Record 63), but that the balance favours privacy protection for all other records. Specifically, I find that disclosure of the date of death, place of death, date of birth, place of birth, age, marital status and occupation information of the deceased, name of the deceased's father, and addresses of the deceased contained in Records 24 and 63 outweigh the privacy interests of the deceased and his father in the circumstances. This information would be of value in identifying potential estate heirs, which is an important public policy objective. Accordingly, I find that disclosure of this information 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.

I will provide the PGT with a highlighted copy of Records 24 and 63, identifying the portions that should be disclosed, as they contain information the disclosure of which would not constitute an unjustified invasion of privacy under section 21(1) of the *Act*.

As identified above, the PGT has claimed that the exemption in section 13(1) applies to Records 9, 28-30 and 32-34. As I have found that each of those records is exempt from disclosure under section 21(1), it is not necessary for me to determine whether section 13(1) applies to them.

ORDER:

1. I order the PGT to provide the appellant with copies of those portions of Records 24 and 63 which are highlighted in the copy of the records provided to the PGT's Freedom of Information Co-ordinator by **August 6, 2004** but not before **July 30, 2004**.
2. I uphold the PGT's decision to deny access to the remaining information.
3. In order to verify compliance with the terms of Order Provision 1, I reserve the right to require the PGT to provide me with copies of the records that are disclosed to the appellant.

Original signed by: _____
Frank DeVries
Adjudicator

_____ June 30, 2004