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

ORDER PO-2723

Appeal PA-040136-2

Office of the Public Guardian and Trustee

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NATURE OF THE APPEAL:

The Office of the Public Guardian and Trustee (the PGT) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to information related to the missing shareholders of a specific company. The request specifically referred to a named company, and then stated:

> Under [the *Act*] we ask that you please be so kind as to forward to us the names, the last know addresses, and the number of shares held for each of the 38 missing shareholders of this company. If possible we would also appreciate having any information that you have regarding their next-of-kin.

In response to the request, the PGT provided access to the records in part. In its decision letter, it stated:

> This is in response to your request for access to records under [the *Act*]. Please be advised that access to the record is granted in part. A copy of the releasable portion of the record is enclosed.
>
> Access to some information, where indicated in the enclosed documents, is denied pursuant to section 21 of the *Act*, as disclosure would constitute an unjustified invasion of personal privacy.
>
> The exempt information includes last know addresses and shareholdings.
>
> In addition … [the PGT] has no information as to any next-of-kin for any of those thirty–five unlocated or missing (individual) shareholders.

The requester (now the appellant) appealed the decision of the PGT. As a result, file number PA-040136-1 was opened.

During the processing of the appeal, the file was placed "on hold" because a jurisdictional issue raised in this appeal was also raised in another appeal also involving the appellant and the PGT. That other appeal was resolved by reconsideration Order PO-2590-R, and the conclusions of the reconsideration Order did not prohibit the processing of the issues in this appeal. As a result, this file was reactivated as appeal PA-040136-2.

During the mediation process, the mediator contacted the PGT and the appellant to discuss the appeal. The PGT advised that in the time that the file was "on hold" the circumstances of the appeal had not changed to allow further disclosure of any additional information to the appellant. The PGT maintains its decision to deny access to the withheld portions of the records.

The appellant confirmed he wished to continue with his appeal.

Mediation did not resolve the issues, and this file was transferred to the adjudication stage of the process. This office sent a Notice of Inquiry, setting out the facts and issues on appeal, to the PGT, initially.

The PGT submitted representations in response, which were shared in their entirety with the appellant. At the same time, the appellant was provided with a copy of the Notice of Inquiry and asked to provide submissions. The appellant provided submissions in response to the Notice. After reviewing them, this office sought reply representations from the PGT and provided it with a copy of the appellant's representations, in their entirety.

The PGT submitted reply representations. In them, the PGT made reference to the application of Order PO-2219 to the circumstances of this case. This office subsequently sent the PGT's representations to the appellant and provided it with an opportunity to address the PGT's argument. The appellant submitted further representations in sur-reply.

The file was then transferred to me to complete the adjudication process.

RECORDS:

The records at issue are the last known addresses, and the number of shares held by 29 shareholders of a specific company.

BACKGROUND TO THE RECORDS AND APPEAL

Portions of the record in this appeal have been the subject of two previous appeals with this office, which arose from previous requests made by the appellant to the PGT. Both of those appeals resulted in orders of this office (Orders PO-2011 and PO-2219).

In Order PO-2219, Adjudicator Hale provides the following background to the records, and to the earlier Order PO-2011:

> In 1984, the (PGT) entered into a voluntary trust agreement pursuant to what is now section 238(4) of the *Business Corporations Act* R.S.O. 1990, C. B-16 with a corporation which was being dissolved. The trust involved the unredeemed shares in the corporation owned by 38 shareholders and claims to the payment of certain interest and dividends on those shares. The company had been incorporated in 1930 and did not carry on business after 1931. In 1962 the company was revitalized when it was discovered that it had substantial assets available for distribution to its shareholders. The liquidator of the company was able to locate some of the original shareholders, but 38 others could not be found. The proceeds of the sale of the assets of the company were distributed by the liquidator to those shareholders who could be located in 1984. The undistributed funds were then deposited with the PGT by the liquidator and remain undisbursed to this date.
>
> The PGT received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to information relating to those shareholders who had not been located by the liquidator of the company at the time of its dissolution

> in 1984. The PGT refused to disclose this information and an appeal of that decision was filed with this office. The requester narrowed the scope of that original request to include only the names of the shareholders. In Order PO-2011, dated April 24, 2002, former Adjudicator Dawn Maruno ordered the PGT to provide the requester with access to the names of the 38 unlocated shareholders. The PGT complied with the order and disclosed the names to the requester.

Adjudicator Hale indicated that he was dealing with a similar request made by the requester. He then identified that the sole information at issue in his appeal was the number of shares owned by the individual shareholders that could not be located.

Concerning whether the information at issue constituted the personal information of the individual shareholders, Adjudicator Hale stated:

> I am satisfied based on my review of the information contained in the record that it contains information relating to financial transactions, in this case the purchase of shares in a corporation, involving each of the individuals named in the record. Accordingly, I find that the information relating to the number of shares held by the 35 individual shareholders contained in the record qualifies as the "personal information" of the shareholders for the purposes of section 2(1).

He then went on to review the appellant's argument that the information was not "personal information" because of section 2(2), which excludes from the definition of "personal information" information about an individual who has been dead for more than 30 years. Adjudicator Hale stated:

> In the appellant's confidential representations, he has provided me with evidence to substantiate his arguments that at least some of the missing shareholders have, in fact, been deceased for more than 30 years. Because of the confidential nature of this evidence I am unable to refer to it in greater detail in the text of this order. The appellant has also provided certain evidence obtained from internet search engines based in the United States with respect to the possible dates of death of several other missing shareholders who resided there. I do not accept that the evidence provided respecting these individuals conclusively establishes the dates of their deaths on a balance of probabilities. While the listings include the names and social security numbers of certain persons, I am unable to make a finding that they conclusively relate to the individuals listed in the record.
>
> Accordingly, based on the submissions of the appellant, I am satisfied that [six individuals listed] on the record have been deceased for at least 30 years. As a result, the information concerning the number of shares held by these six individuals does not qualify as their "personal information" for the purposes of section 2(1) and cannot be exempt from disclosure under section 21(1). As no other exemptions have been claimed for this information and no mandatory

> exemptions apply to it, I will order the PGT to disclose to the appellant the number of shares owned by each of these six individuals.
>
> The appellant has not provided me with sufficient evidence to establish that the other 29 individuals listed on the record have been dead for more than 30 years. Using the calculation posited in the appellant's representations, if an individual had been 30 years of age in 1930, they would be 103 years old today but only 73 years of age 30 years ago when the 30-year clock began to run. In my view, it is not reasonable to assume that all of the individuals listed on the record have been dead for 30 years, particularly using the appellant's calculations as a basis for reaching such a conclusion.

The current appeal

In the current appeal, the request is again for the number of shares held by the 29 missing shareholders of the specific company, as well as the last known addresses of these individuals listed on that record.

DISCUSSION:

PERSONAL INFORMATION

General principles

Under section 2(1) of the *Act*, "personal information" is defined, in part, to mean recorded information about an identifiable individual. To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual [Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F, PO-2225]. Nevertheless, even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual [Orders P-1409, R- 980015, PO-2225].

Pursuant to section 2(2), the definition of personal information does not include information about an individual who has been dead for more than thirty years.

As identified above, the information remaining at issue is the last know addresses, and the number of shares of a specific company held by 29 named individuals. Adjudicator Hale found in Order PO-2219 that the number of shares held by the named individuals constituted the personal information of those individuals. Furthermore, paragraph (d) of the definition of "personal information" states that an individual's address constitutes their personal information for the purpose of section 2(1). Accordingly, subject to my review of the application of section 2(2), the information remaining at issue is the personal information of the 29 identified individuals.

The appellant states that the information is not the personal information of the shareholders on the basis of section 2(2). He states:

> … much of the requested information is not "personal information" under the *Act*, as most, if not all, of the shareholders in question have been dead for more than thirty years.
>
> Section 2(2) of the *Act* provides:
>
> > Personal Information does not include information about an individual who has been dead for more than thirty years.
>
> The Liquidator of [the identified company] was [an identified lawyer and a former Director of the corporation]. In 1979, he applied to the Supreme Court of Ontario for a passing of his accounts as Liquidator. In that passing of accounts, he submitted an affidavit, sworn September 19, 1979, in which he stated, at paragraph 17:
>
> > Distribution of the Assets is in itself very unusual and difficult in that the shareholders' records of the Corporation are nearly 50 years old and almost all of the shareholders of record are deceased persons and a few defunct corporations....
> >
> > This is not surprising given that the corporation had been dormant since 1931.
>
> If almost all of the shareholders were dead in 1979, then most, if not all, of those deceased shareholders have now been dead for more than thirty years. Furthermore, any shareholders that were alive in 1979 would almost certainly now be deceased as well.
>
> The [PGT's] records, which would include the information on which [the] affidavit was based, must indicate which shareholders were deceased in 1979.
>
> [The appellant] therefore submits that the [PGT] should be required to review its files to determine which of the listed shareholders has been dead for more than thirty years and to release the requested information for all such shareholders.

In addition, the appellant refers to section 53 of the *Act*, which states that where an institution refuses access to a record or part of a record, the burden of proof that the record or part of the record falls within one of the specified exemptions under the *Act* lies upon the institution. The appellant therefore submits that the PGT has the burden of proving that the exemption applies, and that it has failed to meet this burden.

The PGT responds to the appellant's position by referring to Order PO-2219, and stating:

> That Order determined that the information contained in the record with respect to [the twenty-nine shareholders] in question was personal information under subsection 2(2) of the [*Act*] because the Appellant … was not able to present "sufficient evidence to establish that the … 29 individuals listed on the record [had] been dead for more than 30 years".

The PGT also states that it has satisfied the burden of proof imposed under section 53 of the *Act* in its representations. The PGT then states:

> … evidence which conclusively establishes, on a balance of probabilities, the dates of death of the several shareholders whose addresses are being sought must be furnished by the Appellant. It is submitted that a bare statement in an affidavit, without more, that "almost all of the shareholders of record are deceased persons" (paragraph 17 of the affidavit … referred to in the Representations of the Appellant …) does not conclusively establish, on a balance of probabilities, the dates of death of the shareholders in question. On page 3 of Order PO-2219, Adjudicator Hale refers to the 1979 affidavit of the liquidator and his "conjecture that they [the shareholders] are likely all deceased."

The appellant responds to the PGT's position by stating:

> … the available evidence supports a finding on a balance of probabilities that the individuals in question have been dead for more than 30 years. In the alternative, the [PGT] has exclusive access to the information that may determine conclusively whether some or all of the individuals have been dead for more than 30 years. Under the circumstances, [the appellant] submits that the [PGT] should be required to review its files to determine which of the listed shareholders have been dead for more than thirty years and to release the requested information, for all such shareholders.

Findings

The parties have provided representations on a number of issues under the personal information definition.

One of the arguments put forward by the appellant and responded to by the PGT relates to which party has the burden of proof concerning the application of section 2(2) of the *Act*. I note that Adjudicator Maruno had similar arguments put before her in Order PO-2011, and addressed this issue in that Order. I will not revisit this issue in this appeal.

The appellant also argues that the PGT would have records that include the information on which the affidavit of the liquidator was based, and "must indicate which shareholders were deceased in

1979." As a result, the appellant takes the position that the PGT should be required to review its files to determine which of the listed shareholders has been dead for more than thirty years and to release the requested information for all such shareholders.

In my view the appellant's position raises an issue about the scope of the appeal. The request in this appeal was clearly restricted to the names, last known addresses, and the number of shares held for each of the missing shareholders, as well as for "any information … regarding their next-of-kin." The PGT responded to the request by identifying the record at issue, and stating that it "has no information as to any next-of-kin for any of those … missing (individual) shareholders." The appellant now appears to take the position that the PGT ought to review all its record-holdings for additional information about the individuals named in the record. In my view, this would be expanding the scope of the request.

However, I do not want the parties to interpret this in a way that suggests there is no obligation on the PGT to provide information on the dates of death of the individuals if that information is contained in the file at issue, or is known to the PGT. In my view, if the PGT had clear evidence of the death of an individual prior to 30 years that is connected to the responsive record, that information should be reflected in its decision regarding access. Clearly, given the nature of the records and the mandate of the PGT, information that is readily available in the context of an appeal, and that would provide information about the issue, ought to be revealed by parties to an appeal. However, in the circumstances, I am not satisfied that appellant's statement that certain PGT records "must indicate which shareholders were deceased in 1979" is sufficient to require further evidence or information from the PGT within the confines of the current request as worded.

Finally, the parties provide arguments regarding the application of section 2(2). The appellant states that "most, if not all, of the shareholders in question have been dead for more than thirty years" and, as he did in the evidence provided in Order PO-2219, refers to the 1979 affidavit of the liquidator in which the liquidator stated "almost all of the shareholders of record are deceased persons" and that the corporation had been dormant since 1931. The appellant then states:

> If almost all of the shareholders were dead in 1979, then most, if not all, of those deceased shareholders have now been dead for more than thirty years. Furthermore, any shareholders that were alive in 1979 would almost certainly now be deceased as well.

The PGT responded by stating that "a bare statement in an affidavit, without more, that 'almost all of the shareholders of record are deceased persons' … does not conclusively establish, on a balance of probabilities, the dates of death of the shareholders in question." The PGT also refers to Order PO-2219, in which Adjudicator Hale reviews this issue, and refers to the statement in the affidavit as "conjecture that they [the shareholders] are likely all deceased."

I note that in Order PO-2219 the appellant had provided Adjudicator Hale with sufficient evidence to support a finding that six individuals had died more than 30 years earlier, and the

information relating to those six individuals was disclosed. With regard to the remaining 29 individuals, the appellant had apparently provided Adjudicator Hale with information and calculations about when it may be reasonable to assume that the individuals were deceased. Adjudicator Hale addressed that issue as follows:

> The appellant has not provided me with sufficient evidence to establish that the other 29 individuals listed on the record have been dead for more than 30 years. Using the calculation posited in the appellant's representations, if an individual had been 30 years of age in 1930, they would be 103 years old today but only 73 years of age 30 years ago when the 30-year clock began to run. In my view, it is not reasonable to assume that all of the individuals listed on the record have been dead for 30 years, particularly using the appellant's calculations as a basis for reaching such a conclusion.

This appeal deals with the same individuals that were at issue in Order PO-2219. In this appeal, I have not been provided with any suggestions or calculations regarding the dates whereby the individuals listed in the records may be presumed to have died. I recognize that a number of years have passed since Order PO-2219 was issued, and that additional factors may apply; however, I have not been provided with evidence to support a finding that the individuals listed in the records have been dead for over 30 years. Although I acknowledge that, given the age and nature of the records (holdings by shareholders (not in trust) in 1931) it is likely that a number of the individuals have been dead for over 30 years, without additional evidence it is not possible to know which individuals have been deceased for that period of time, and I am not satisfied that sufficient evidence has been provided to me to make that finding. In fact, the 1979 affidavit itself, relied on by the appellant, suggests that some of the individuals have not been deceased for over thirty years, as it states that "almost all of the shareholders of record are deceased persons." Based on this affidavit, it is not possible to determine which ones have been deceased for over thirty years.

I make this finding in light of the decisions in Orders PO-1232 and PO-1886, which reviewed assumptions that can be made about the life expectancy and the probable year of the death of an individual. In Order PO-1886, former Assistant Commissioner Mitchinson determined that the parents of identified individuals (who were themselves deceased) could be assumed to be deceased. The former assistant Commissioner reviewed Order PO-1232, and then stated:

> It is clear from the comments and findings [in Order PO-1232] that, absent proof establishing the dates of death, a determination of the probable dates can only be made on the basis of reasonably applied assumptions. Given the context in which this finding must be made, and the fact that the *Act* specifically provides for the retention of privacy rights for 30 years following death, I agree that these assumptions should be conservative. However, it is also relevant to point out that this Office in past orders has determined that privacy rights do diminish after death (see, for example, Orders M-50, PO-1717 and PO-1736). In my view, the

> longer a person has been dead, the more their privacy rights diminish, culminating in an elimination of these rights after 30 years.
>
> If the two individuals identified by the appellant were alive today, they would be 97 and 93 years of age. Clearly, the parents of these individuals have all been dead for a considerable period of time. The question is whether or not it is reasonable to assume that they have been dead for the full 30 years required in order for section 2(2) to apply.
>
> In estimating the dates of death, the Ministry has used more conservative assumptions than those advocated by the appellant. The Ministry also points out that the appellant has inaccurately interpreted the documentation provided by him in support of his assumptions.
>
> I agree with the Ministry that the Statistics Canada print-out supplied by the appellant does not support his position that the life expectancy of individuals born in the time period of the parents in these cases was approximately 71 years. The 71-year figure referred to by the appellant appears to refer to the life expectancy at birth of people born between 1960 and 1962. That being said, the theory put forward by the appellant is sound. Although in the closing years of the 20th century it was not unusual … for someone still alive to live to the age of 95, the same cannot be said of people born in earlier times. The fact that life expectancy has increased over time would appear to me to be a commonly accepted fact, and applying current life expectancy assumptions to people born in the 1800s would, in my view, not be reasonable. For this reason, I do not accept the so-called "125 year rule" applied by the Ministry in these appeals.

The Assistant Commissioner went on to review the application of those assumptions to the circumstances of his appeal.

As identified above, I have not been provided with representations on the application of any assumptions that may be made about the date of death of the shareholders. Given that none of the shares are designated held "in trust", it is reasonable to assume that the shareholders had attained the age of majority in 1931, but little additional information is available. In the absence of representations on this issue, and in light of the assumptions made and applied in PO-1886 and PO-1232, I am not satisfied that the individuals named in the record can be assumed to have been deceased for over 30 years. Accordingly, section 2(2) does not apply, and I am satisfied that the information at issue constitutes the personal information of the named individual shareholders.

PERSONAL PRIVACY

Having determined that the remaining information contained in the records is the personal information of individuals other than the appellant, the mandatory exemption at section 21(1)

requires that the PGT refuse to disclose the information unless one of the exceptions to the exemption at sections 21(1)(a) through (f) applies. In my view, the only exception which could have any application in the present appeal is set out in section 21(1)(f), which states:

> 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), (3) and (4) of the *Act* provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of personal privacy within the meaning of section 21(1)(f). Section 21(2) provides criteria to consider in making this determination, section 21(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy and section 21(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

The Divisional Court has ruled that once a presumption against disclosure has been established under section 21(3), it cannot be rebutted by either one or a combination of the factors set out in section 21(2). A section 21(3) presumption can be overcome, however, if the personal information at issue is caught by section 21(4) or if the "compelling public interest" override at section 23 applies (*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767).

If none of the presumptions in section 21(3) applies, the institution must consider the factors listed in section 21(2), as well as all other relevant circumstances.

Number of shares held by individual shareholders

The PGT submits that the presumption at section 21(3)(f) applies to the number of shares held by each individual in the record. Section 21(3)(f) states:

> 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 states:

> It is respectfully submitted that a presumed unjustified invasion of personal privacy would occur should the shareholdings of the twenty-nine missing shareholders be released to the Appellant. This information describes the assets of

> each individual shareholder and a portion of their financial history and investment activities. As noted in Order PO-2219 (p.2), the Appellant has already been informed of the dollar value of the shares as of the date of dissolution of the corporation in 1984.
>
> …
>
> In Order PO-2291 (p.5), Adjudicator Hale held that this same "information in the record stating the number of shares held by each of the 29 individual shareholders who have not been conclusively proven to be dead for more than 30 years is exempt from disclosure under [sub]section 21(1)."

In response to the PGT's submissions regarding the number of shares, the appellant acknowledges that section 21(3)(f) is applicable to this information. He submits:

> …if the number of shares held by an individual shareholder (who has not been dead for more than 30 years) are included in the disclosed information, then this section will apply because the number of shares and their value would then be known to the requester.

As I noted above, in Order PO-2219, Adjudicator Hale dealt with the same information that is at issue in the current appeal. After considering the appellant's submissions, he found:

> In my view, the information sought by the appellant, the number of shares held by each individual, describes the assets or net worth of the individual shareholders who are entitled to the funds being held by the PGT…[T]his information refers specifically to the value of an asset belonging to these individuals. I find that the information falls within the ambit of the presumption in section 21(3)(f).

I agree with these findings and find that they apply equally to the number of shares held by each individual in the circumstances of the current appeal. As noted above, once the application of a presumption has been established, it cannot be overridden by the considerations in section 21(2), either singly or in combination. In addition, the appellant has not raised the possible application of the "public interest override" provision in section 23 and I find that none of the exceptions in section 21(4) have any application.

Accordingly, I find that the undisclosed information in the record stating the number of shares held by each of the 29 individual shareholders who have not been conclusively proven to be dead for more than 30 years is exempt from disclosure under section 21(1).

Addresses of individual shareholders

All that remains at issue is the addresses for the 29 individuals. The PGT does not specifically address this information in its initial representations. The appellant takes the position that the

disclosure of the addresses of the missing shareholders would not constitute an unjustified invasion of personal privacy under section 21(1)(f). The appellant submits that the factors favouring disclosure at sections 21(2)(a) and (c) apply to this information. In addition, the appellant believes that two unlisted factors previously considered by this office also apply. The two unlisted factors relied on are "diminished privacy after death" and "benefit to unknown heirs (or, in this case, shareholders)." The appellant also made submissions on the non-application of the factors that favour privacy protection at section 21(2)(e) and (f). In reply submissions, the PGT provided counter arguments to each of the factors and considerations raised by the appellant. I will begin my discussion with the factors favouring privacy protection. Sections 21(2)(e) and (f) state:

> 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,
>
> (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)(e) - Pecuniary or other harm

The appellant states:

> Section 21(2)(e) provides that the [PGT] must consider whether disclosure would unfairly expose the person to whom the information relates to pecuniary or other harm. In these circumstances, the person to whom the information relates is deceased and will not be exposed to pecuniary or other harm. The issue of whether a beneficiary in an intestate estate administered by the [PGT] (analogous to the heirs of claimants in this case) would suffer pecuniary harm by the disclosure of information, has been decided in [the appellant's] favour in past decisions.
>
> In Reconsideration Order PO -1790-R, Senior Adjudicator David Goodis found as follows:
>
> > ***In my view, the PGT has not established that disclosure ... will cause pecuniary or other harm to potential heirs for the purposes of s.21(2)(e) or otherwise under section 21…*** *I am not persuaded on the materials 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 circumstances 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 the heir tracer, or not.***
>
> [The appellant] respectfully submits that the previous decision of Senior Adjudicator Goodis applies equally to this appeal. Providing claimants (or the personal representatives of claimants) with a free choice as to whether to engage [the appellant's] services cannot reasonably be described as causing pecuniary or other harm to the claimants or their heirs. [appellant's emphasis]

In response to this argument, the PGT submits:

> … the Appellant does not inform a shareholder of the shareholder's right to contact the Public Guardian and Trustee with respect to the shareholdings, that is, to make a free choice between known entities for the purpose of redeeming shareholdings.
>
> Accordingly, because of a lack of information in correspondence with a shareholder when located, there is the possibility of pecuniary or other harm to such a shareholder [within] the meaning of clause 21(2)(e) of the Act.

In support of its position, the PGT provided photocopies of five documents that it indicates are often distributed by the appellant to potential estate beneficiaries. The PGT continues:

> Although they relate to estates of deceased individuals, it is respectfully submitted that the purpose or intent of them is similar to correspondence with shareholders of dissolved corporations who may have shares to be redeemed. There is no mention of the Public Guardian and Trustee who actually administers the estate in question and a suggestion that if the addressee does not engage the Appellant, he or she is to renounce all interest in the estate.

Adjudicator Maruno addressed the PGT's arguments that disclosure might result in pecuniary harm to the shareholders on the basis that the appellant will charge a percentage fee for his services. In finding that this section did not apply in the circumstances, she relied on previous findings of former Senior Adjudicator David Goodis:

> In Order PO-1790-R (a reconsideration of Order PO-1736, cited above), Senior Adjudicator David Goodis was faced with a similar argument in similar circumstances. He held, in part, as follows:
>
> > . . . 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. While it may be that in some cases heir tracers have been known to mislead potential heirs during the course of contractual discussions, I do not have sufficient material before me on which to reach a conclusion that this is a significant risk. In any event, potential heirs who contract with heir tracers based on, for example, duress or misrepresentation, may seek remedies in the courts based on contract law.

> I agree with this reasoning, and given the similarity between an heir tracer being paid for locating heirs so they can claim an inheritance, and the appellant's business of locating shareholders in dissolved corporations so they can receive their share of the assets, I have decided it applies in the circumstances of this appeal. [Order PO-1790-R was upheld by the court in the same judgment respecting Order PO-1736, cited above.]

In my view, the findings made by former Senior Adjudicator Goodis are directly relevant to the argument's brought by the PGT in the current appeal. I agree with his reasoning and conclusions and find that section 21(2)(e) does not apply to the addresses of the missing shareholders.

Section 21(2)(f) - the information is highly sensitive

The appellant submits that:

> [t]he release of the last known addresses of the shareholders - information that is typically included in public documents such as phone books and which in 1979 was already as much as 50 years old- cannot be described as "highly sensitive".

The PGT does not provide submissions on the application of section 21(2)(f). Its only submissions regarding disclosure of the addresses of the missing shareholders are found in a general statement:

> The Public Guardian and Trustee concedes that if a given shareholder can be shown conclusively, on a balance of probabilities, to have been dead for a period of at least thirty years, that shareholder's last-known address may be released to the Appellant. However, it is submitted that neither the last-known address nor the number of shares held should be disclosed with respect to a shareholder whose death at least thirty years ago cannot be conclusively established on a balance of probabilities.

In the current appeal, the information relating to shareholders' addresses is over 50 years old. In the 1979 affidavit of the liquidator (referred to above), the liquidator indicates that efforts were made to locate shareholders prior to 1979. In addition, he indicates that further efforts were

made to locate shareholders in August 1979, by placing advertisements in the newspapers of the cities in which the shareholders lived, and then again in September 1979 by sending a mailing to the last known addresses of the shareholders as shown on the records of the Corporation. As Adjudicator Hale noted in the background to the request and appeal, the liquidator of the company was able to locate some of the original shareholders, but 38 others could not be found. The proceeds of the sale of the assets of the company were distributed by the liquidator to those shareholders who could be located in 1984. Based on the information before me, it would appear to be very unlikely that the shareholders continue to live at the addresses listed on the record. In the circumstances of this appeal, the age of the information and the likelihood that the individuals are no longer living at those addresses weighs against a finding that the information would be highly sensitive.

Moreover, in order PO-1736, former Assistant Commissioner Mitchinson considered whether Client Name, Client Account Number, Client Address, Last Occupation, Place of Death, Date of Death, Inheritors and Setup Date information contained in a chart relating to estates being administered by the PGT for a particular period of time was "highly sensitive" information. He found:

> …This office has stated in previous orders that for information to be considered highly sensitive, it must be found that disclosure of the information could reasonably be expected to cause excessive personal distress to the subject individual [Orders M-1053, P-1681]. This factor has been found to apply, for example, to information about professional misconduct [Order M-1053] and in circumstances involving allegations of workplace harassment [Order P-685]. In my view, based on the material before me, it cannot be said that disclosure of the information remaining at issue could reasonably be expected to cause excessive personal distress to the subject individuals. While there may be some degree of sensitivity to this information, it is not comparable in sensitivity to the types of information that have been found to meet the section 21(2)(f) threshold. As a result, I find that this factor does not apply here.

I agree with the former Assistant Commissioner's assessment of addresses and find that it similarly applies to the addresses of the missing shareholders in the current appeal. Accordingly, for the reasons discussed above, I find that section 21(2)(f) does not apply to the addresses of the missing shareholders.

Unlisted Factor- benefit to unknown heirs/shareholders

The appellant states:

> This unlisted factor was recognized in Orders P-1493, PO-1717 and PO-1936. In Order P-1493, Assistant Commissioner Tom Mitchinson 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 entitlements under an estate. Although not directly related to any of the section 21(2) consideration[s], I, find that this is an unlisted, factor favouring disclosure.*

In Order PO-1936, Assistant Commissioner Tom Mitchinson held:

> *Applying similar reasoning that followed in Orders PO-1717, PO-1736 and PO-1923, 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. While I acknowledge that the appellant is not a private heir tracer, his rationale for seeking access to the record is analogous to that of a private heir tracer... . [I]n my view, the Consulate of Croatia is performing a function akin to a private heir tracer; attempting to identify and locate individuals who could be entitled to the proceeds of an estate that would otherwise escheat to the Crown.*
>
> In the present case, 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 submits that this unlisted factor has no application in this appeal as it cannot rebut the presumption in section 21(3)(f). It would appear that the PGT has only turned its mind to whether this factor is relevant in respect of the number of shares held by the missing shareholders, but does not address its relevance vis-à-vis the addresses.

In addressing this issue in Order PO-2011, former Adjudicator Maruno also noted that Senior Adjudicator David Goodis adopted this reasoning, in similar circumstances, in his 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.).] She concluded with respect to the names of the shareholders:

> I adopt the approach taken by the Assistant Commissioner and the Senior Adjudicator in the above orders, and similarly find that the potential for disclosure of the information at issue to lead to individuals (either the shareholders or their heirs) being located and claiming entitlement to shares of the dissolved company is a factor of moderate to high weight in favour of disclosure.

In my view, the same reasoning and conclusions apply to the addresses of these same shareholders, and accordingly, I assign a moderate to high weight to this unlisted factor that favours disclosure.

Analysis of factors

I have found that the listed factors favouring disclosure in sections 21(2)(e) and (f) do not apply in the circumstances of this appeal, but that the unlisted factor, "benefit to missing shareholders or unknown heirs" is a relevant consideration favouring disclosure, and I assigned it a moderate to high weight.

In Order M-1146, I considered the rationale for protecting the address of an individual in the context of a request for an individual's name and current address:

> **Privacy concerns relating to address information**
>
> I have considered the rationale for protecting the address of an individual. One of the fundamental purposes of the Act is to protect the privacy of individuals with respect to personal information about themselves held by institutions (section 1(b)).
>
> In my view, there are significant privacy concerns which result from disclosure of an individual's name and address. Together, they provide sufficient information to enable a requester to identify and locate the individual, whether that person wants to be located or not. This, in turn, may have serious consequences for an individual's control of his or her own life, as well as his or her personal safety. This potential result of disclosure, in my view, weighs heavily in favour of privacy protection under the Act.
>
> This is not to say that this kind of information should never be disclosed under the Act. However, before a decision is made to disclose an individual's name and address together to a requester, there must, in my view, exist cogent factors or circumstances to shift the balance in favour of disclosure.

In the circumstances of the current appeal, I find that the evidence exists to shift that balance. Given the age of the information at issue and the likelihood that the shareholders no longer live at the addresses set out in the record, I find that any privacy interest inherent in the addresses of the missing shareholders is low. Moreover, it may well be that an individual (including the shareholders and/or their heirs) whose privacy is at stake may also stand to benefit from being located. In my view, not only does this factor diminish the privacy concern further, it weighs significantly in favour of disclosure. Overall, I find that the factor favouring disclosure in these circumstances outweighs the relatively low privacy interest and, therefore, I conclude that disclosure of the addresses would not constitute an unjustified invasion of personal privacy under section 21(1)(f) of the *Act*. As a result, I find that the addresses are not exempt under section

21(1). In the circumstances, it is not necessary for me to consider the applicability of the additional factors the appellant relies on in favour of disclosure.

APPLICATION OF SECTION 42

The appellant submits that because of the operation of section 42(a) and (c), he is entitled to disclosure of the requested information. These provisions state:

> An institution shall not disclose personal information in its custody or under its control except,
>
> (a) in accordance with Part II;
>
> (c) for the purpose for which it was obtained or compiled or for a consistent purpose;

The appellant submits:

> …the requested disclosure is in accordance with Part II of the *Act*. In the alternative, section 42 permits the disclosure in the absence of compliance with Part II if any of the listed circumstances apply. In this case, the requested disclosure is permitted by s.42(c).
>
> The information was obtained or compiled by the [PGT] for the express purpose of locating the shareholders (or their heirs) of The [named company], and processing claims by those shareholders (or heirs). Disclosure to [the appellant] as requested facilitates these goals. The disclosure is therefore authorized by s.42(c) of the *Act*.
>
> For these reasons, [the appellant] submits that the requested disclosure is authorized by section 42 of the *Act*.

In response, the PGT states:

> … in accordance with the reasons expressed in Order M-96 by former Assistant Commissioner Tom Mitchinson (upheld on judicial review) and followed in Order P-679 by former Assistant Commissioner Irwin Glasberg, the considerations in what is Part III of the *Freedom of Information and Protection of Privacy Act* (the "provincial" *Act*), namely, the protection of individual privacy and the use and disclosure of personal information, are not relevant to an access request made under Part II of that *Act*
>
> In Order PO-2219 (p.7), Adjudicator Hale adopted the reasoning expressed in Order M-96 and stated that the provisions of Part III of the *Act*, including section

> 42, do not apply to a request and the subsequent appeal of an access decision which was made under Part II of the *Act*.

In Order PO-2219, after considering similar arguments presented by the appellant, Adjudicator Hale stated:

> In support of his argument that the disclosure is permissible under section 42(c), the appellant submits that:
>
> > . . . the information sought is for the express purpose of locating persons interested in the estate with a view to finding the heirs at law and, where no estate trustee may have yet been appointed, a person with a higher priority at law to serve as estate trustee. Disclosure to the appellant of the information sought allows the appellant to select those cases where recovery [is] feasible and thereby facilitates those goals. The disclosure is therefore authorized by section 42(c) of the *Act*.
>
> The PGT relies upon the reasoning in the decision of Assistant Commissioner Tom Mitchinson in Order M-96 (upheld on judicial review in *O.S.S.T.F., District 39 v. Wellington (County) Board of Education* (February 6, 1995), Toronto Doc. 407/93, (Ont. Div. Ct.), leave to appeal refused (October 16, 1995, Doc. M15357 (C.A.)), which was followed with approval by former Assistant Commissioner Irwin Glasberg in Order P-679. The PGT states:
>
> > In Order M-96, Assistant Commissioner Tom Mitchinson commented on the relationship between section 32 of the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M-56, as amended (the equivalent of section 42 of the *Act*), and the access provisions in Part I of that [the municipal] *Act*:
> >
> > This Part [of the municipal *Act*] establishes a set of rules governing the collection, retention, use and disclosure of information by institutions in the course of administering their public responsibilities. Section 32 prohibits disclosure of personal information except in certain circumstances; it does not create a right of access. The [appellant's] request was made under Part I of the *Act* [the equivalent to Part II of the provincial *Act*], and this appeal concerns the Board's decision to deny access. In my view, the considerations contained in Part II of the *Act* [the equivalent to Part III of the provincial *Act*], and specifically the factors listed in section 32 are not relevant to any access request made under Part I.

> I adopt the reasoning expressed in this decision for the purposes of the present appeal. In my view, the provisions of Part III of the *Act*, including section 42 do not apply to a request and the subsequent appeal of an access decision made under Part II of the *Act*. Accordingly, I find that section 42 has no application in the circumstances of this appeal.

I agree with the position taken by Adjudicator Hale in Order PO-2219, and find, for the reasons enunciated above, that section 42 has no application in the circumstances of this appeal.

ORDER:

1. I uphold the PGT's decision to withhold the number of shares for each of the 29 individuals contained in the record at issue.

2. I order the PGT to disclose the addresses of the 29 missing shareholders by providing the appellant with a copy of this information no later than **October 27, 2008**.

3. In order to verify compliance with provision 2, I reserve the right to require the PGT to provide me with a copy of the material sent to the appellant.

Original signed by: October 6, 2008
Laurel Cropley
Adjudicator