



**Information and Privacy
Commissioner/Ontario**

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

INTERIM ORDER PO-2802-I

Appeal PA07-307

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 the copy of a file related to the estate of an identified deceased individual. The request was filed by an individual on behalf of his grandmother, the sister of the deceased individual.

The PGT identified records responsive to the request and, in its initial decision, relied on the mandatory exemption at section 21(1) of the *Act* (personal privacy) to deny access to them, in full.

The decision was appealed. The Appeal Form sets out that the request was by the appellant on behalf of a “close relative” of the deceased, inferring that the exception to the general prohibition against the disclosure of personal information in section 21(1) referred to in section 21(4)(d) of the *Act* (disclosure for compassionate grounds) is applicable in the circumstances of this appeal. Attached to the Appeal Form was a copy of an Application for Certificate of Appointment of Estate Trustee without a Will for the deceased’s estate.

During mediation, the appellant provided the mediator with a letter setting out what he viewed as the compassionate reasons in favour of granting access to all the records at issue, which the mediator forwarded on to the PGT. The PGT reconsidered its decision and disclosed forty-two pages of responsive records. As a result, those pages, and any duplicates of those pages, are no longer at issue in the appeal.

Mediation did not resolve the remaining issues in the appeal and, in accordance with this office’s usual practice, a Mediator’s Report was sent to the parties. The matter then moved to the adjudication stage of the process.

After receiving the Mediator’s report, the PGT advised the mediator that it also wished to claim the application of the discretionary exemption at section 13(1) (advice to government) and the mandatory exemption at section 17(1) (third party information) to the records remaining at issue. The PGT also advised that section 66(a) (exercise of rights of deceased) of the *Act* is relevant to the appeal. The PGT explained that it had always intended to apply these sections of the *Act*, but didn’t do so earlier because it believed that the request had been narrowed and then resolved at mediation. Finally, the PGT advised the mediator that, in addition to the forty-two pages of records that were released during the course of mediation, it had also applied section 21(4)(d) to nine other records that it disclosed to the appellant.

Prior to my issuing a Notice of Inquiry, the appellant provided this office with a copy of a letter he sent to the PGT posing a number of specific questions about the administration of the estate. With a view to resolving the appeal, the PGT provided a responding letter containing additional information. At the request of the mediator, the PGT agreed to a telephone conference call with the appellant to address any further inquiries. In a letter confirming the conference call, the PGT provided the appellant with additional information about the administration of the estate along with a new record (page 813) providing an accounting of the estate containing annotations explaining receipts and disbursements. After the conference call took place, the PGT then sent yet another letter to the appellant, enclosing further copies of certain explanatory documentation that it had previously provided to him.

These further discussions, however, did not resolve all of the issue in the appeal and I began the adjudication phase of the appeal process.

To commence the adjudication, I sent a Notice of Inquiry setting out the facts and issues in the appeal to the PGT, initially. Because the appellant was purporting to exercise his grandmother's rights of access under section 66(b) of the *Act*, and some of the records contained her personal information, I added the exemptions at sections 49(a) and (b) (personal privacy) as issues in the appeal. The PGT provided representations in response to the Notice. In its representations, the PGT indicated that it had also decided to provide the appellant with access to additional records that were routine or administrative in nature. The PGT further advised that there was considerable duplication in the records and it did not object to providing the appellant with duplicates of the records previously disclosed. In addition, the PGT advised that certain records or portions thereof, pertain to unrelated estates and are not responsive to the request. I agree and find that a portion of pages 111 (duplicated by 419), 217 (duplicated as page 393), 219 to 220 (duplicated as pages 395 and 396) and 452 and all of pages 364, 432, 433 to 434, 435 and 436, pertain to unrelated estates and are not responsive to the request. I will not be addressing this information any further in this appeal.

Prior to my preparing a Notice of Inquiry to be sent to the appellant, I received a further letter from him inquiring about the manner in which the PGT administered the estate and asking whether the PGT had the right to withhold the name of a beneficiary of a Registered Retirement Investment Fund (RIF), one of the main assets of the estate. This is not the first time that the appellant or his grandmother took issue with the manner in which the PGT administered the estate. Some of the records at issue are correspondence to and from the appellant's grandmother's solicitor initially retained to represent her in the context of the administration of the estate who then posed a number of questions about the administration on behalf of his client at its conclusion. As well, some of the responsive records consist of correspondence to and from a second solicitor who was retained as a result of the appellant's grandmother's dissatisfaction over the final result of the estate distribution.

In the Notice of Inquiry I subsequently sent to the appellant, which was accompanied by a copy of the PGT's complete representations, I advised him that it is not within my power to answer questions about the manner in which the PGT administered the estate but that my role in this inquiry is governed by my statutory mandate. This would include a determination whether the name of the beneficiary of a RIF was exempt under the *Act*.

In response to the Notice, the appellant provided a copy of a current Power of Attorney and stated that, if asked, he could furnish videotape proof that his grandmother is still alive. Other than a series of questions about the administration of the estate, including inquiries relating to the disbursement of funds to a beneficiary other than the appellant's grandmother, no other submissions were made by the appellant during the adjudication of this appeal.

Finally, in the course of preparing my decision on this file, the PGT provided a further supplementary decision letter disclosing to the appellant additional records that it considered

routine or administrative in nature. As a result, those records, and duplicates of those records, are also no longer at issue in the appeal.

RECORDS:

Remaining at issue in this appeal are the undisclosed responsive portions of the deceased individual's estate file.

DISCUSSION:

RECORDS NO LONGER AT ISSUE

As a result of the supplementary decisions made by the PGT, as well as the degree of duplication of the records, either in whole or in part, many of the responsive records are no longer at issue in this appeal.

In particular, the following records, in their entirety, are no longer at issue in the appeal:

Pages 1 to 2 (duplicated by 109 to 110 and 417 to 418), 3 to 5 (duplicated as pages 228 to 230, 232 to 234, 404 to 406 and 408 to 410), 6 and 7 (duplicated as 154 to 155 and 330 to 331), 8 (duplicated as 153 and 329), 9 and 10 (duplicated as 156 to 157 and 332 to 333), 11 to 14 (duplicated as 129 to 132 and 305 to 308 and in part as 143 and 319), 15 to 16 (partially duplicated as 161 to 162 and 337 to 338), 34 (duplicated as 242 and 259), 42, 43 to 56 (duplicated as 78 to 91), 57 to 58 (partially duplicated as 98 and 701), 64 to 65 (duplicated as 67, 276, 278 and 472), 76 (duplicated as 289), 92, 93, 94, 103, 104 (duplicated as 290), 105 to 107 (duplicated as 291 to 294), 112 (duplicated as 420), 113 (duplicated as 421), 114 (duplicated as 422), 115 (duplicated as 423), 116 (duplicated as 424), 117 (duplicated as 425), 118 (duplicated as 294), 119 (duplicated as 295 and 426), 122 (duplicated as 298) and 813.

For the same reasons, only the withheld portions of the following records remain at issue:

The deceased's social insurance number (SIN) and the name of a beneficiary of the RIF severed from page 17 (duplicated as 63, 108, 275, 416, and 605), the deceased's SIN number severed from page 18 (duplicated by 704), the name of a beneficiary of the RIF and their contact information severed from page 19 (duplicated as 544), the name of the beneficiary of the RIF severed from page 20 (duplicated as 159 and 335), the deceased's SIN number severed from the tax returns at pages 21 to 33 (duplicated as 243 to 255), the name of a landlord and a solicitor severed from a statement of account comprising pages 35 to 39 (duplicated as 165 to 169, 178 to 182, 352 to 356 and partially duplicated as 341 to 343), the name of the beneficiary of a small life insurance policy severed from

page 40 (duplicated as 121 and 297) and the name of the beneficiary of the small life insurance policy severed from page 41 (duplicated as 120 and 296).

Accordingly, these records, or portions of the records not at issue, will not be addressed any further in this order.

PERSONAL REPRESENTATIVE

Section 66(b) of the *Act* states:

Any right or power conferred on an individual by this *Act* may be exercised, by the individual's attorney under a continuing power of attorney, the individual's attorney under a power of attorney for personal care, the individual's guardian of the person, or the individual's guardian of property.

The initial request for access was made on behalf of an individual by her grandson, pursuant to a Power of Attorney. Attached to the initial request was a copy of a Power of Attorney issued on August 25, 2004, accompanied by a translation of the original. It authorizes the appellant to act for his grandmother under the Power of Attorney. The PGT correctly points out in its representations that this Power of Attorney was only valid until August 25, 2007. In response, the appellant provided a more recent Power of Attorney from his grandmother in his favour, issued on November 17, 2006. That Power of Attorney is valid until November 17, 2009. Accordingly, I find that the requester is entitled to rely on section 66(b) of the *Act* and exercise his grandmother's right of access to the records at issue in this appeal.

LATE RAISING OF DISCRETIONARY EXEMPTIONS

Section 11.01 of this office's *Code of Procedure* provides:

In an appeal from an access decision, excluding an appeal arising from a deemed refusal, an institution may make a new discretionary exemption claim only within 35 days after the institution is notified of the appeal. A new discretionary exemption claim made within this period shall be contained in a new written decision sent to the parties and the IPC. If the appeal proceeds to the Adjudication stage, the Adjudicator may decide not to consider a new discretionary exemption claim made after the 35-day period.

In its initial decision letter, the PGT only claimed the application of the mandatory exemption at section 21(1) of the *Act*. After receiving the Mediator's report, the PGT advised the mediator that it also wished to claim the application of the discretionary exemption at section 13(1) (advice to government) and the mandatory exemption at section 17(1) (third party information) to the records remaining at issue. The PGT also advised that section 66(a) (exercise of rights of

deceased) of the *Act* is relevant to the appeal. The PGT explained that it had always intended to apply these sections of the *Act*, but didn't do so earlier because it believed that the request had been narrowed and then resolved at mediation.

Analysis and Findings

The purpose of this office's 35-day policy is to provide institutions with a window of opportunity to raise new discretionary exemptions, but only at a stage in the appeal where the integrity of the process would not be compromised and the interests of the requester would not be prejudiced. The 35-day policy is not inflexible, and the specific circumstances of each appeal must be considered in deciding whether to allow discretionary exemption claims made after the 35-day period (Orders P-658, PO-2113). The 35-day policy was upheld by the Divisional Court in *Ontario (Ministry of Consumer and Commercial Relations) v. Fineberg* (21 December 1995), Toronto Doc. 110/95, leave to appeal refused [1996] O.J. No. 1838 (C.A.).

Because section 17(1) is a mandatory exemption, the 35-day time limit does not apply. Accordingly, I will be considering the application of section 17(1) in this appeal.

In Order PO-2113, dealing with the provincial equivalent of the *Act*, Adjudicator Donald Hale set out the following principles that have been established in previous orders with respect to the appropriateness of an institution claiming additional discretionary exemptions after the expiration of the time period prescribed in the Confirmation of Appeal:

In Order P-658, former Adjudicator Anita Fineberg explained why the prompt identification of discretionary exemptions is necessary in order to maintain the integrity of the appeals process. She indicated that, unless the scope of the exemptions being claimed is known at an early stage in the proceedings, it will not be possible to effectively seek a mediated settlement of the appeal under section 51 of the *Act*. She also pointed out that, where a new discretionary exemption is raised after the Notice of Inquiry is issued, this could require a re-notification of the parties in order to provide them with an opportunity to submit representations on the applicability of the newly claimed exemption, thereby delaying the appeal. Finally, she pointed out that in many cases the value of information sought by appellants diminishes with time and, in these situations, appellants are particularly prejudiced by delays arising from the late raising of new exemptions.

The objective of the 35-day policy established by this Office is to provide government organizations with a window of opportunity to raise new discretionary exemptions, but to restrict this opportunity to a stage in the appeal where the integrity of the process would not be compromised or the interests of the appellant prejudiced. The 35-day policy is not inflexible. The specific circumstances of each appeal must be considered individually in determining whether discretionary exemptions can be raised after the 35-day period.

In my view, the delay in the PGT's timing in claiming section 13(1) has not resulted in any significant prejudice to the appellant, nor has it compromised the integrity of the process. I note that the appellant has had an opportunity to make representations on the application of the new discretionary exemption (and for that matter, the mandatory exemption at section 17(1)). In the circumstances, I find that the prejudice to the PGT in disallowing its section 13(1) claim would outweigh any prejudice to the appellant or his grandmother in allowing it. As a result, I will consider the application of section 13(1) in this appeal.

On a final note, in its representations the PGT makes a passing reference to the possible application of the discretionary exemption at section 15 (relations with other governments) of the *Act* to pages 223 (duplicated as 399) and 282. As I find those pages to be exempt under section 21(1) of the *Act* in the discussion on personal privacy below, it is not necessary to consider whether they are also exempt under section 15.

INFORMATION OBTAINED ON A TAX RETURN

The PGT claimed that the undisclosed portions of pages 17 (duplicated as 63, 108, 275, 416, and 605), 20 (duplicated as 159 and 335) and 21 to 33 (duplicated as 243 to 255) are exempt from disclosure under section 17(2) of the *Act*. Section 17(2) reads:

A head shall refuse to disclose a record that reveals information that was obtained on a tax return or gathered for the purpose of determining tax liability or collecting a tax.

In Interim Order PO-2059-I, Adjudicator Laurel Cropley reviewed the history of the section 17(2) exemption and its purposes as follows:

Section 17(2) is an amendment to the *Act*, which came into force on January 1, 1990. It arose from a comprehensive review of confidentiality provisions conducted by the Standing Committee on the Legislative Assembly in 1989 (in relation to sections 67(2) and (3) of the *Act*). During the review, Management Board of Cabinet identified a number of tax-related confidentiality provisions under other *Acts*, but was of the view that these provisions could be adequately protected by an amendment to section 17. Murray Elston, the then Chairman of Management Board subsequently issued a *Report on [section] 67(2) of the Freedom of Information and Protection of Privacy Act* [(the Elston Report)]. The report had this to say about tax records (at pages 12-13):

There are eleven confidentiality provisions in statutes administered by the Ministry of Revenue which provide for the secrecy of information submitted on tax returns and other records relating to the tax liability of taxpayers. With respect to individual taxpayers, such information is strongly protected from disclosure in s. 21(3)(e) of the [*Act*]. However there is no similar provision in the

[Act] for taxpayers other than individuals (e.g. corporations). While the tax system provides for the mandatory supplying of information to government, the system could not function without a high degree of voluntary compliance since enforcement mechanisms could not realistically be used to force compliance. Furthermore, the applicable exemption in the [Act] – s. 17 – is limited since the harms tests of the section are very difficult to apply to the raw financial data contained on such records. The uncertainty inherent in such a result could cause difficulty in ensuring continued compliance.

... The type of information to be protected could be described and included as exempt records in a new subsection 17(2).

In my view, these comments reflect a generalized concern of the Legislature to protect financial information that individuals or corporations must supply to the government for taxation purposes.

I agree and although the PGT claims that the tax returns are exempt under section 17(2), that section, as discussed above, is generally applicable only to information pertaining to third party commercial entities and not individuals.

Furthermore, the legislative history of this section clearly indicates that the information the Legislature intended to protect from disclosure under section 17(2) was relatively narrow, and was restricted to the type of tax information that was supplied to the Government of Ontario for taxation purposes [see in this regard Orders P-373 and PO-2059-1]. The information at issue in this appeal does not qualify as that type of information.

In my view, section 17(2) does not apply in the circumstances of this appeal.

PERSONAL INFORMATION

In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains “personal information” in accordance with section 2(1) of the *Act* and, if so, to whom it relates.

Section 2(1) of the *Act* defines “personal information”, as follows:

“personal information” means recorded information about an identifiable individual, including,

- (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,
- (e) the personal opinions or views of the individual except where they relate to another 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 content 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.

To qualify as "personal information", it must be reasonable to expect that an individual may be identified if the information is disclosed [Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.)].

The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information [Order 11].

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, PO-2225].

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].

Section 2(3) of the *Act* modifies the definition of the term “personal information” by excluding an individual’s name, title, contact information or designation which identifies that individual in a “business, professional or official capacity”. Section 2(4) further clarifies that contact information about an individual who carries out business, professional or official responsibilities from their dwelling does not qualify as “personal information” for the purposes of the definition in section 2(1).

I agree with the PGT that the records remaining at issue contain the personal information of the deceased and with two exceptions, the appellant and other identifiable individuals in their personal capacity. This personal information includes dates of birth, ages, addresses, phone numbers, identifying numbers, employment history, financial transactions in which an individual has been involved and the individual’s name where it appears with other personal information relating to the individual. The two exceptions are the severances on pages 36 and 38 of a statement of account (duplicated as pages 166 and 168, 179 and 181 and 353 and 355). The severance on page 36 is the name of a landlord. The severance on page 38 is the name of a solicitor. Both names fall within the ambit of section 2(3) of the *Act* which, as discussed above, modifies the definition of the term “personal information” by excluding an individual’s name, title, contact information or designation which identifies that individual in a “business, professional or official capacity”. No other exemptions are claimed for that information nor, in my opinion do any apply. Accordingly, I will order that information to be disclosed to the appellant.

Because of the application of section 66(b), the appellant stands in the shoes of his grandmother and is entitled to receive any information to which she would have a right of access under the *Act*. I am also treating the request, where applicable, as encompassing a request for access to any of the appellant’s own personal information that may be contained in the records remaining at issue.

In order to effectively process this appeal I have divided the records into two categories. The first category is records that contain the personal information of the deceased and other identifiable individuals, but do not contain the personal information of the appellant or his grandmother. The second category consists of records that contain the personal information of the deceased and/or other identifiable individuals as well as the appellant or his grandmother. Included in this category are letters to and from counsel for the appellant’s grandmother, as discussed in the Nature of the Appeal, above. I have further divided these categories into sub-headings as set out below.

Category One: records containing the personal information of the deceased and other identifiable individuals, but not containing the personal information of the appellant or his grandmother:

Statements of Account/Asset/Liability List/Estate Processing Details/Cash Distribution Details

These records contain information pertaining to the deceased's estate's assets and liabilities, pertain to the processing of the estate and/or set out the details of the distribution of the estate assets. This information is found at pages 218 (duplicated as 394), 670 to 671, 534 to 536, 664 to 668, 625, 643, 645 and 697.

Bank Accounts/Bank Statements/Banking Records and Correspondence/Canada Savings Bonds/Asset Searches and Inquiries

These records contain the deceased's banking and investment information, searches and inquiries relating to assets of the deceased including correspondence with banking and government agencies as well as transaction information of a beneficiary other than the appellant's grandmother. This information is found at pages 19, 59 to 62 (duplicated as 271 to 274), 68 (duplicated as 280), 69 (duplicated as 281), 206 (duplicated as 382), 532, 537 to 545, 546, 547, 548, 549, 550 to 551, 552, 553, 554 to 557, 566, 572 to 574, 580, 594 to 596, 597, 602 to 603, 604, 608 to 610, 632, 633, 634 (duplicated by 638), 636, 637, 638, 648, 652, 653, 654, 657, 658, 659, 660 to 661, 678 (duplicated by 681), 682, 692 to 693, 695, 696, 698, 699, 700, 707, 709, 711, 720 to 721, 723, 726 to 733, 734, 736, 738, 739, 741, 749, 750, 751, 758, 759, 770, 776 to 783 and 784 to 793.

Court Documents

These records consist of draft and final estate documents filed in Court. This information appears at pages 17 (duplicated as 63, 108, 275, 416 and 605), 611, 612 to 617, 629 (duplicated as 640), 641 and 644.

Clearance Certificates

These are certificates pertaining to any tax liability of the estate. This information is found at pages 135 (duplicated as 311) and 563.

Compensation Worksheets/Computations of Interest

These records contain the PGT's internal financial accounting relating to the estate as well as computations of interest on the estate assets. This information is found at pages 139 to 142 (duplicated as 146 to 149, 315 to 318 and 322 to 325), 173 (duplicated as 185 and 347), 174 (duplicated as 186, 348 and 360), 359, 528, 529 to 530 and 531.

Estate Reports/Survey of Assets

These records consist of estate reports of a financial nature and lists of estate assets. This information is found at pages 123 to 125 (duplicated as 299 to 301), 685 (duplicated as 669), 718 and 811.

Deceased's Pension and Pension Benefits/Life Insurance

These records contain details of the deceased's former employer's company pension and life insurance entitlements and contain details of the deceased's employment history. This information is found at pages 18 (duplicated as 704), 702, 703, 705 (duplicated as 735), 708, 710, 737, 740, 742, 748 and 764.

Canada Pension Plan/Old Age Security/Death Benefit

These records contain information relating to the deceased's entitlements under Federal legislation. This information is found at pages 570 to 571, 575 to 576, 577 to 579, 586 to 589, 646, 655, 656, 691, 752, 753 and 765.

Various Estate Administration Expenses/Legal Accounts/Charge Memos

These are internal records of the PGT relating to the various expenses incurred by PGT to administer the estate, including locating heirs and beneficiaries and to establish their entitlement under the estate. This information is found at pages 134, 137 to 138 (duplicated as 313 to 314), 144 to 145 (duplicated as 320 to 321), 170 to 171 (duplicated as 344 to 345), 183 to 184 (duplicated as 357 to 358), 191 (duplicated as 366), 198 (duplicated as 373), 199 (duplicated as 374), 200 (duplicated as 375), 215 (duplicated as 391), 216 (duplicated as 392), the responsive portion of 217 (duplicated as 393), the responsive portion of 219 to 220 (duplicated as 395 to 396), 310, 526 to 527, 593, 598, 599, 606, 607, 622, 689, 690 and 755 to 756.

Agreement with Heir Tracer

This record sets out the terms of an agreement between the PGT and a third party heir tracer. This information is found at pages 439 to 441 (duplicated in part as 445 to 447 and 463 to 466).

Notices to Creditors

These records consist of notifications to creditors prior to final distribution of the proceeds of the estate. This information is found at pages 592, 621, 626, 627 to 628 and 630 to 621.

Tax Returns and Related Documents

These records consist of tax returns while the deceased was alive and those filed after his death, various tax receipts and related documentation, including memoranda regarding tax liability.

This information is found at pages 21 to 33 (duplicated as 243 to 255), 136 (duplicated as 312) 160 (duplicated as 336), 264, 581 to 585, 600, 601, 635, 642, 662 to 663, 672 to 673, 674 to 675, 676 to 677, 679 to 680, 706, 725, 766 to 769 and 772 to 775.

Enquiries and Information about Estate Beneficiaries (other than the appellant's grandmother)

These records consist of information relating to estate beneficiaries and efforts to identify and locate them. This includes the personal information of the identified beneficiary of the small life insurance policy who ultimately could not be found by the PGT. This information is found at pages 66 (duplicated as 277 and 471), 70 to 71 (duplicated as 283 to 284), 72 (duplicated as 285), 74 to 75, 202 (duplicated as 377 and 511), 204 (duplicated as 380), 205, 210 to 211 (duplicated as 386 to 387 and 453 to 454), 223 (duplicated as 399), 287, 288 (duplicated as 461), 378 (duplicated at 512), 381, 428 to 429 (duplicated as 442 to 443), 430, 431, 437 to 438, 448, 449 (duplicated as 467), 450 to 451, 455, 456, 457, 458, 459, 460, 462, 468, 567 to 569, 590 to 591, 719, 745 to 746 and 760 to 761.

Deceased's Notes and Address Book

These records consist of the deceased's personal notes and address book. This information is found at pages 95 to 97 and 794 to 806.

Photographs of Deceased's Last Residence

These records consist of photographs of the deceased's last place of residence and his belongings. This information is found at pages 712 to 717.

Deceased's Identity Cards/Social Insurance Cards

These records consist of the deceased's identity cards, Social Insurance cards and health cards. This information is found at pages 486 to 489, 490 to 491, 807 to 808, 809 and 810.

Information relating to the Deceased's Last Residence

These records contain information relating to the deceased's last residence, including the amount of any rental arrears. This is found at pages 73, 286, 683, 684, 686 (duplicated as page 687), 688, 694, 722 and 747.

Application for Death Benefits/Old Age Security Benefits/Death Certificate/Death Certificates

These records relate to applications for various benefits and a death certificate as well as death certificates for the deceased (and another identifiable individual). This information is found at pages 99 to 102, 212, 282, 388 (duplicated as 469 and 754), 618 to 620, 639, 647, 649 and 650 to 651.

Application for Pension Benefit

This is a one page application for Pension Benefits under the Federal pension plan. This is found at page 771.

Documents of an Administrative Nature

These records relate to various matters arising out of the administration of the estate. This information is found at pages 111 (duplicated by 419), 133 (duplicated by 309), 190, 365, 427, 452, 525, 533, 724, 743, 744, 757, 762, 763 and 812.

Category Two: Records containing the personal information of the deceased and/or other identifiable individuals as well as the appellant and/or his grandmother:

Estate Processing Details

These records contain information pertaining to the processing of the estate and/or set out certain details regarding the distribution of the estate, and include Powers of Attorney and releases as well as correspondence to and from the appellant's grandmother's counsel. This information is found at pages 20 (duplicated as 159 and 335), 40 (duplicated as 121 and 297), 41 (duplicated as 120 and 296), 163 to 164, 192 to 193 (duplicated as 367 to 368 and 558 to 559), 194 (duplicated as 371), 195 (duplicated as 564), 196, 227 to 230 (duplicated as 231 to 234, 403 to 406 and 407 to 410), 261, 339 to 343, 369, 370, 473 to 476 and 560.

Deceased's Company Pension and Pension Benefits/Life Insurance

These records contain details of the deceased's former employer's company pension and life insurance entitlements and include correspondence to and from the appellant's grandmother's counsel. This information is found at pages 561 and 565.

Enquiries and Information about Heirs

These records consist of information relating to inquiries about estate beneficiaries and efforts to identify and locate them and include correspondence to and from the appellant's grandmother's counsel. This information is found at pages 126 to 127 (duplicated as 302 to 303), 175 to 176 (duplicated as 187 to 188, 349 to 350 and 361 to 362), 197 (duplicated as 372), 203 (duplicated as 213 and 379), 207 (duplicated as 383), 208 to 209 (duplicated as 384 to 385), 235 (duplicated as 411), 236 (duplicated as 412), 238 to 239 (duplicated as 414 to 415), 389, 444, 470, 477 to 485, 493 to 510, 513 to 524, 562 and 623.

Concerns about Administration of the Estate

These records contain concerns about the PGT's administration of the deceased's estate and include correspondence to and from counsel for the appellant's grandmother. This information is found at pages 77, 240, 256, 257, 258, 262 to 263, 265, 266, 267, 268 and 269 to 270.

General Inquiries about Estate Administration

These records consist of various inquiries relating to the administration of the estate and include correspondence to and from the appellant's grandmother's counsel. This information is found at pages 128 (duplicated as 304), 158 (duplicated as 334), 201 (duplicated as 376), 214 (duplicated as 390), 221 (duplicated as 397), 222 (duplicated as 398), 224 (duplicated as 400), 225 (duplicated as 401), 226 (duplicated as 402), 237 (duplicated as 413 and 624) and 260.

Documents of an Administrative Nature

These records relate to various matters arising out of the administration of the estate. This information is found at page 172 (duplicated as pages 177, 189, 346, 351 and 363).

PERSONAL PRIVACY

The legislative scheme established by the *Act* contains different procedures for processing requests for personal information, depending on whether the request is for an individual's own personal information, or the personal information of others. If the request is for the personal information of others, it is treated as a request for general records under Part II of the *Act*. If it is a request for the individual's own personal information, it is processed under Part III of the *Act*, which includes sections 48, 49(a) and 49(b).

Section 48(1) sets out the access procedure applicable to requests for an individual's own personal information. Section 49 provides a complete list of exemptions to be applied where an individual has requested access to his or her own personal information. All of the exemptions in section 49 are discretionary. Sections 49(a) and (b) state as follows:

A head may refuse to disclose to the individual to whom the information relates personal information,

(a) where section 12, **13**, 14, 14.1, 14.2, 15, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that personal information [emphasis added].

(b) where the disclosure would constitute an unjustified invasion of another individual's personal privacy.

Accordingly, under section 49(a) where a record contains personal information of both the appellant and/or his grandmother and section 13(1) would apply to the disclosure of that information, the PGT may refuse to disclose that information to the appellant.

Under section 49(b), where a record contains personal information of the appellant and/or his grandmother as well as another identifiable individual, and disclosure of that information would constitute an unjustified invasion of the other individual's personal privacy, the PGT may refuse to disclose that information to the appellant.

Despite a finding that information falls within the scope of sections 49(a) or (b), the PGT *may* exercise its discretion to disclose the information. This involves a weighing of the appellant and his grandmother's rights of access to their own personal information against the other individual's right to protection of their privacy.

If a record does not contain the personal information of the appellant or his grandmother the request is treated as a request for general records under Part II of the *Act*. In this appeal, the PGT has claimed the application of section 13(1) as well as the mandatory exemption at section 21(1). Under section 21 of the *Act*, the PGT *must* refuse to disclose the personal information unless disclosure would not constitute an "unjustified invasion of personal privacy" of the individual to whom the information relates.

Sections 21(1) to (4) 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. If the information fits within any of paragraphs (a) to (e) of section 21(1), disclosure is not an unjustified invasion of personal privacy and the information is not exempt under sections 21(1) or 49(b), as the case may be. Section 21(2) provides some criteria for the institution 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. Section 21(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

The Divisional Court has stated 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 21(2) [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (*John Doe*)] though it can be overcome if the personal information at issue falls under section 21(4) of the *Act*, or if a finding is made under section 23 of the *Act* that a compelling public interest exists in the disclosure of the record in which the personal information is contained which clearly outweighs the purpose of the exemption. [See Order PO-1764] The appellant did not raise the application of section 23 in this appeal, nor in my view would it apply.

After first considering whether section 21(4)(d) of the *Act* applies in the circumstances of this appeal, I will then address the records in the following manner. The records that do not contain the personal information of the appellant and/or his grandmother will be examined under Part II of the *Act*, and I will consider the application of the discretionary exemption at section 13(1) or the mandatory exemption at section 21(1) of the *Act*, as the case may be, to them. Those records

that contain the personal information of the appellant and/or his grandmother will be evaluated under Part III of the *Act*, and I will consider the application of the discretionary exemptions at sections 49(a) and (b) of the *Act*, as the case may be, to these records.

THE APPLICATION OF SECTION 21(4)(d) OF THE ACT

Section 21(4) of the *Act* refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy. This section was amended by the addition of section 21(4)(d) which states:

Despite subsection (3), a disclosure does not constitute an unjustified invasion of personal privacy if it,

discloses personal information about a deceased individual to a spouse or a close relative of the deceased individual, and the head is satisfied that disclosure is desirable for compassionate reasons.

Based on the wording of this provision, a finding that the exception in section 21(4)(d) applies to the personal information in this appeal means that the disclosure of that information would not constitute an unjustified invasion of personal privacy.

Steps to follow in applying section 21(4)(d)

In Orders MO-2237 and MO-2245, Assistant Commissioner Brian Beamish determined that the application of the Municipal equivalent of section 21(4)(d) requires a consideration of the following questions, all of which must be answered in the affirmative in order for the section to apply:

1. Do the records contain the personal information of a deceased individual?
2. Is the requester a spouse or “close relative” of the deceased individual?
3. Is the disclosure of the personal information of the deceased individual desirable for compassionate reasons, in the circumstances of the request?

I agree with and adopt the three steps in determining the application of section 21(4)(d) in this appeal.

Step 1 – Personal Information of the Deceased

I find that the bulk of the information in the records remaining at issue constitutes the personal information of the deceased individual. I find that this requirement for the application of section 21(4)(d) is satisfied.

Step 2 – Spouse or “Close Relative”

“Close Relative” is defined in section 2(1) of the *Act*:

“close relative” means a parent, child, grandparent, grandchild, brother, sister, uncle, aunt, nephew or niece, whether related by blood or adoption.

I am satisfied that the appellant acts for the sister of the deceased individual whose personal information is contained in the records at issue, and that she qualifies as a “close relative.” I find that this requirement for the application of section 21(4)(d) is also satisfied.

Step 3– Desirable for Compassionate Reasons

The PGT submits that there are no “compassionate reasons” to disclose any of the remaining information at issue. It submits that it has already disclosed “all relevant personal information about the deceased which meets the test of 21(4)(d)”. In correspondence he sent to the PGT and to this office, the appellant asserts that inadequate information was provided by the PGT to convince him or his grandmother that the estate was adequately administered. In a nutshell, they believe that because of the manner in which the PGT administered the estate, the appellant’s grandmother did not receive her full entitlement.

Analysis and Finding

In Order MO-2237, Assistant Commissioner Beamish wrote:

... by using the words “in the circumstances” the Legislature intended that a broad and all encompassing approach be taken to the consideration by this office of whether or not disclosure is “desirable for compassionate reasons.” In my view, by enacting this amendment to the *Act*, the Legislature intended to address an identified gap in the access to information legislation and increase the amount of information being provided to bereaved family members. It is recognition that, for surviving family members, greater knowledge of the circumstances of their loved one’s death is by its very nature compassionate.

I agree with the Assistant Commissioner’s reasoning and apply it here.

I have considered the issue and find that the reasons for requesting the withheld information do not qualify as compassionate reasons. This request is not motivated by a desire to resolve what the appellant’s grandmother believes is a lack of clarity in the information she has received about her brother’s death or to assist her in the grieving process, but is instead sought essentially for the purposes of an accounting. In my view, this is not the kind of reason that meets the threshold of compassionate. Accordingly, I find that, in the circumstances, disclosure of the withheld personal information of the deceased in the records is not desirable for compassionate reasons. As a result, I find that the exception in section 21(4)(d) does not apply.

ADVICE OR RECOMMENDATIONS

The PGT claims that section 13(1) applies to pages 150 to 152 (duplicated as 326 to 328) and 241.

Section 13(1) states:

A head may refuse to disclose a record where the disclosure would reveal advice or recommendations of a public servant, any other person employed in the service of an institution or a consultant retained by an institution.

The purpose of section 13 is to ensure that persons employed in the public service are able to freely and frankly advise and make recommendations within the deliberative process of government decision-making and policy-making. The exemption also seeks to preserve the decision maker or policy maker's ability to take actions and make decisions without unfair pressure [Order P-1398, upheld on judicial review in *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner)* (1999), 118 O.A.C. 108 (C.A.)].

“Advice” and “recommendations” have a similar meaning. In order to qualify as “advice or recommendations”, the information in the record must suggest a course of action that will ultimately be accepted or rejected by the person being advised [Orders PO-2028, PO-2084, upheld on judicial review in *Ontario (Ministry of Northern Development and Mines) v. Ontario (Assistant Information and Privacy Commissioner)*, [2004] O.J. No. 163 (Div. Ct.), aff'd [2005] O.J. No. 4048 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 564; see also *Ontario (Ministry of Transportation) v. Ontario (Information and Privacy Commissioner)*, [2005] O.J. No. 4047 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 563].

Advice or recommendations may be revealed in two ways:

- the information itself consists of advice or recommendations
- the information, if disclosed, would permit one to accurately infer the advice or recommendations given

[Orders PO-2028, PO-2084, upheld on judicial review in *Ontario (Ministry of Northern Development and Mines) v. Ontario (Assistant Information and Privacy Commissioner)*, [2004] O.J. No. 163 (Div. Ct.), aff'd [2005] O.J. No. 4048 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 564; see also *Ontario (Ministry of Transportation) v. Ontario (Information and Privacy Commissioner)*, [2005] O.J. No. 4047 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 563]

Examples of the types of information that have been found not to qualify as advice or recommendations include:

- factual or background information
- analytical information
- evaluative information
- notifications or cautions
- views
- a supervisor's direction to staff on how to conduct an investigation

[Order P-434; Order PO-1993, upheld on judicial review in *Ontario (Ministry of Transportation) v. Ontario (Information and Privacy Commissioner)*, [2004] O.J. No. 224 (Div. Ct.), aff'd [2005] O.J. No. 4047 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 563; Order PO-2115; Order P-363, upheld on judicial review in *Ontario (Human Rights Commission) v. Ontario (Information and Privacy Commissioner)* (March 25, 1994), Toronto Doc. 721/92 (Ont. Div. Ct.); Order PO-2028, upheld on judicial review in *Ontario (Ministry of Northern Development and Mines) v. Ontario (Assistant Information and Privacy Commissioner)*, [2004] O.J. No. 163 (Div. Ct.), aff'd [2005] O.J. No. 4048 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 564]

Records 150 to 152 (duplicated as 326 to 328) do not contain any of the appellant's or his grandmother's personal information. Record 241 contains the personal information of both the appellant and his grandmother.

The PGT explains that these records contain the advice and recommendations of its legal counsel with respect to a request by another person under the *Act* for information about this estate. The PGT submits that these records identify the individual that made the request and contain the basis for a suggested course of action.

Pages 150 to 151 (duplicated as 326 to 327)

Having considered the PGT's representations and reviewed the contents of the records numbered pages 150 to 151 (duplicated as 326 to 327), it is clear to me that some of the information in these records qualifies as "advice or recommendations" within the meaning of section 13(1). In particular, these records contain information that suggests a course of action that will ultimately be accepted or rejected by the person being advised or, if disclosed, would permit one to accurately infer the advice or recommendations given. I find that neither sections 13(2) or 13(3) apply to this information.

However, there is other information in the record that is factual in nature or contains opinions, views, or analysis that would not necessarily permit an accurate inference as to the suggested course of action. I find that this information is not advice or recommendations and therefore does not qualify for exemption under section 13(1).

On these records, however, there is a notation that they were also withheld under section 21(1) of the *Act*. The information in the records that I find does not qualify for exemption under section 13(1) will be addressed in the discussion on the application of section 21 of the *Act*, below.

Page 152 (duplicated as page 328)

Applying the same analysis, I conclude that page 152 (duplicated as 328) contains information that qualifies as “advice or recommendations” within the meaning of section 13(1). In particular, page 152 contains information that, if disclosed, would permit one to accurately infer the advice or recommendations given. I find that neither sections 13(2) or 13(3) apply to this record. Accordingly, I find this record to be exempt under section 13(1) of the *Act*.

Page 241

The PGT submits with respect to page 241 that:

[This record], notably the final paragraph, consists of recommendations about a course of action in respect of a request for access to the record, provided by a public servant who is a legal counsel at the [PGT] to the team leader of the program unit and to the manager of administrative services at the [PGT]. The nature of advice and recommended course of action is apparent from reading the record. It was important that this advice be documented for the record and it is equally important that its confidentiality be maintained, otherwise further advice of this nature would be gravely inhibited.

Having considered the PGT’s representations and reviewed the contents of page 241, it is clear to me that some of the information in the record qualifies as “advice or recommendations” within the meaning of section 13(1). In particular, this record contains information that suggests a course of action that will ultimately be accepted or rejected by the person being advised or, if disclosed, would permit one to accurately infer the advice or recommendations given. I find that the information falls within section 13(1) and that neither sections 13(2) or 13(3) apply to this information. Accordingly, the portion that is highlighted on a copy of page 241 being provided to the PGT with this order, qualifies for exemption under section 49(a), in conjunction with section 13(1)(a) of the *Act*.

However, there is other information in the record that is factual in nature or contains opinions, views, or analysis that would not necessarily permit an accurate inference as to the suggested course of action. This information is not highlighted on the copy of page 241 being provided to the PGT with this order. I find that the information in the record that I have *not* highlighted is not advice or recommendations and therefore does not qualify for exemption under section 49(a) in conjunction with section 13(1).

On the record, however, there is a notation that it was also withheld under section 21(1) of the *Act*. The information in the records that I find does not qualify for exemption under section

49(a) in conjunction with 13(1) will be addressed in the discussion on the application of sections 21(1) and 49(b) of the *Act*, below.

PERSONAL PRIVACY

Section 21 reads, in part:

- (1) A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,
 - (f) if the disclosure does not constitute an unjustified invasion of personal privacy.
- (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,
 - (a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny;
 - (b) access to the personal information may promote public health and safety;
 - (c) access to the personal information will promote informed choice in the purchase of goods and services;
 - (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
 - (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; and
 - (i) the disclosure may unfairly damage the reputation of any person referred to in the record.

- (3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,
- (a) 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;
 - (g) consists of personal recommendations or evaluations, character references or personnel evaluations; or
 - (h) indicates the individual's racial or ethnic origin, sexual orientation or religious or political beliefs or associations.

The PGT submits that the presumptions at sections 21(3)(e), 21(3)(f) and 21(3)(g) are applicable in the circumstances of this appeal.

The application of these exemptions is not addressed in the appellant's representations. That said, the theme of correspondence to the PGT and this office reflects a concern about the administration of the estate and the distribution of its proceeds. The appellant asserts that inadequate information was provided to convince him or his grandmother that the estate was adequately administered by the PGT.

Section 21(3)(d)

Although the PGT did not refer to the section 21(3)(d) presumption in its representations, page 703, a Category One record, contains information that relates to the deceased's employment history.

Section 21(3)(f)

This office has consistently applied the section 21(3)(f) exemption to certain types of information that is typically found in the PGT's estate administration files. [See Orders PO-1936, PO-2297 and PO-2662]. I have reviewed the records remaining at issue in this appeal and conclude that a great number of them contain information about finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness that pertains to the deceased's, his estate and other identifiable individuals, including beneficiaries other than the appellant's grandmother. This information is contained in the following records:

Category One Records

Pages 59 to 62 (duplicated as 271 to 274), 123 to 125 (duplicated as 299 to 301), 137 to 138 (duplicated as 313 to 314), 139 to 142 (duplicated as 146 to 149, 315 to 318 and 322 to 325), 144 to 145 (duplicated as 320 to 321), 160 (duplicated as 336), 170 to 171 (duplicated as 344 to 345), 173 (duplicated as 185 and 347), 174 (duplicated as 186, 348 and 360), 183 to 184 (duplicated as 357 to 358), 191 (duplicated as 366), 198 (duplicated as 373), 199 (duplicated as 374), 200 (duplicated as 375), 206 (duplicated as 382), 215 (duplicated as 391), 216 (duplicated as 392), the responsive portion of 217 (duplicated as 393), 218 (duplicated as 394), the responsive portion of 219 to 220 (duplicated as 395 to 396), 264, 359, 526 to 527, 528, 529 to 530, 531, 532, 534 to 536, 537 to 545, 550 to 551, 552, 553, 554 to 557, 570 to 571, 572 to 574, 575 to 576, 577 to 579, 580, 581 to 585, 586 to 589, 593, 594 to 596, 597, 598, 599, 600, 601, 602 to 603, 606, 607, 608 to 610, 611, 612 to 617, 622, 625, 629 (duplicated as 640), 641, 642, 643, 645, 654, 657, 659, 660 to 661, 662 to 663, 664 to 668, 669 (duplicated as 685), 670 to 671, 672 to 673, 674 to 675, 676 to 677, 678 (duplicated by 681), 679 to 680, 682, 683, 684, 689, 690, 692 to 693, 696, 697, 698, 702, 703, 705 (duplicated as 735), 706, 707, 710, 711, 720 to 721, 725, 726 to 733, 737, 759, 764, 765, 766 to 769, 770, 772 to 775, 776 to 783, 784 to 793, 804 and 811.

Category Two Records

Pages 172 (duplicated as 177, 189, 346, 351 and 363), 258, 261, 262 to 263, 266, 267, 269 to 270, 561 and 565.

Section 21(3)(e)

The PGT submits that section 21(3)(e) applies to the deceased's Social Insurance Number(SIN) and information about the RIF contained in page 242.

I have found the deceased's and other individuals' Social Insurance Numbers and the name of beneficiaries other than the appellant's grandmother to be exempt in the section on the application of the factors and circumstances listed under section 21(2), below. Accordingly, it is not necessary to consider whether it also falls within the section 21(3)(e) presumption.

Page 242 is a duplicate of page 34 which the PGT has already disclosed and is no longer at issue in the appeal. In any event, I have already determined above that much of the information pertaining to the RIF falls within the section 21(3)(f) presumption. Any information pertaining to the RIF that I did not determine to fall within this presumption I have found to be exempt in the section on the application of the factors and circumstances listed under section 21(2), below. Accordingly, it is also not necessary to consider whether this information falls within the section 21(3)(e) presumption.

Section 21(3)(g)

The PGT submits that section 21(3)(g) applies to the last paragraph of Record 241 because it consists of evaluative comments by a public servant. This is, however, the same information that I have found above to qualify for exemption under section 49(a) in conjunction with section 13(1) of the *Act*. As a result, it is not necessary to consider whether it is subject to the presumption in section 21(3)(g) and therefore exempt under section 49(b).

Section 21(3)(h)

Although the PGT did not refer to this presumption in its representations, the information concerning the race, birthplace and original citizenship of the deceased indicates his ethnic origin and therefore falls within the scope of section 21(3)(h) regardless of the fact that some of this information is likely known by the appellant or his grandmother [see in this regard Order PO-1936]. This information appears in Category One Records at pages 486 to 489 and 490 to 492 and in Category Two records at pages 126 to 127 (duplicated as 302 to 303), 175 to 176 (duplicated as 187 to 188, 349 to 350 and 361 to 362) and 513 to 524.

In summary, I have found that the information in the pages listed above fit within the presumptions at sections 21(3)(d), 21(3)(f) and 21(3)(h) and that their disclosure would be presumed to constitute an unjustified invasion of the personal privacy of the deceased. Accordingly, this information qualifies for exemption under sections 21(1) or 49(b) of the *Act*, as the case may be, and should not be disclosed.

Section 21(2)

The remaining information consists of information pertaining to the PGT's day-to-day administering of the estate, information about heirs which was collected by the PGT, the names of beneficiaries, the deceased's and other individuals' Social Insurance card information, certain information about the deceased on the Statement of Death form, and other documents and/or correspondence created by the PGT or provided to the PGT by others in the context of the administration of the deceased's estate, including the deceased's handwritten notes and address book.

With respect to any relevant facts or circumstances that might apply, PGT states:

Even where the requester has a financial interest in the estate, the privacy interest of individuals will outweigh a claim under section 21(2)(a) and (d): Order P-239.

None of the criteria favouring disclosure, which are listed in section 21(2)(a) to (d), are present or relevant to a determination under section 21(2) for this record. Firstly, the requester is not claiming an issue of public scrutiny. Secondly, the severed or withheld information about the specific identity of the beneficiaries of a RIF and an insurance policy, are not relevant to whether the [PGT] has acted

appropriately in the administration of this estate. There is ample documentation to support the appropriateness of the [PGT]'s actions as administrator and the fact that two assets which were originally thought to be part of the estate, were not.

The heir's power of attorney and legal counsel signed a Release approving the [PGT]'s administration. The effect of the release is to waive any further rights or claims against the estate or estate trustee. If the heir is of the view that the documentation suggests improper or negligent actions on the part of her legal counsel, then her proper recourse is to the Lawyers' Indemnity Fund, or to the courts. If litigation is initiated, the [PGT] will be obliged to respect the Rules of Civil procedure on disclosure of evidence. The identity of the beneficiaries is not required to initiate any such litigation. There is no indication of any improper actions by the beneficiaries of these assets and to the contrary, there is evidence that these individuals were long time friends of the deceased.

On the other hand, a number of criteria listed section 21(2) favouring non-disclosure are relevant to deciding whether disclosure of personal information would be an unjustified invasion of personal privacy:

- “(e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm”. See Record 241 in support of this argument.
- “(f) the personal information is highly sensitive;” If the identity of the named beneficiaries is disclosed, particularly that of the beneficiary of the RIF, any contact with that individual may cause distress to that third party.

Section 21(2)(e) - exposure to pecuniary harm

In my view, the PGT has failed to establish that disclosing some of the information at issue will unfairly expose the individual to whom the information relates to pecuniary or other harm. The PGT refers to a record detailing certain conduct in support of this submission, however, that conduct is in relation to the office of the PGT and fails to meet the threshold necessary to establish that any individual will be “unfairly” exposed to “pecuniary” harm. In my view, the PGT has failed to provide clear, cogent and detailed evidence in support of the application of this factor. Accordingly, I do not find it to be relevant in the circumstances of this appeal.

Section 21(2)(f) - highly sensitive

In Order PO-2518 Senior Adjudicator John Higgins revisited the issue of what evidence is required to fall within the ambit of section 21(2)(f). He wrote:

Throughout the Ministry's representations, it argues that the information at issue is highly sensitive. Previous orders have stated that, in order for personal 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 MO-1053, PO-1681, PO-1736]. In my view, this interpretation is difficult to apply and a reasonable expectation of "significant" personal distress is a more appropriate threshold in assessing whether information qualifies as "highly sensitive."

Although I am satisfied that releasing the identity of the beneficiary of the RIF and/or the life insurance policy will not "unfairly" expose these individuals to "pecuniary" harm, in the unique circumstances of this case, I am satisfied that disclosure of the personal information of the beneficiary of the RIF or of the life insurance policy, if they are found, could reasonably be expected to cause them "significant personal distress". This is because it would leave them open to being contacted by the appellant in connection with concerns over the PGT's administration of the estate, a consequence unlikely to be expected or welcome. Furthermore, I find that disclosure of the personal information at pages 95 to 97 would also qualify under that section [see in this regard Order PO-1936]. The balance of the information remaining at issue in this appeal, in my view, is not the type of information that would qualify as "highly sensitive" under section 21(2)(f).

Other Relevant Circumstance - diminished privacy interest after death

The factors listed in section 21(2) are not exhaustive. There are other relevant circumstances that are sometimes germane to a section 21(2) analysis. One such relevant circumstance that is often considered in appeals of this nature is the possible "diminished privacy interest after death". The key determination in considering the relevance and impact of this circumstance is the nature of the record that is under consideration [See in this regard Order PO-1936]. 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.)], former Senior Adjudicator David Goodis had to decide whether this was a relevant circumstance where, at the time of the request, the deceased individual had been dead for approximately two years. In that Order he wrote:

On the one hand, it is clear that disclosure of the personal information remaining at issue would constitute an invasion of personal privacy of both the deceased individuals and the inheritors, to varying degrees, depending on the particular information. In the case of the Client Name alone, I find that the privacy interest inherent in this information is low in the circumstances. This finding is consistent with previous orders of this office in similar circumstances [Orders 71, P-1187, PO-1717]. Similarly, I find that the privacy interest inherent in the Client Account Number and Setup Date information to be low, since it is primarily administrative in nature, and would reveal little more than the fact that the deceased individual's estate was being administered by the PGT. This conclusion

is strengthened by the “diminished privacy interest after death” factor. I further find that disclosure of the Client Address, Last Occupation, Place of Death and Date of Death would constitute a moderate invasion of the privacy of the deceased individuals, in light of the “diminished privacy interest after death” factor. While disclosure of this information would reveal more about the subject individuals, beyond merely administrative information, it is not as inherently sensitive as it might be were the individuals alive. Finally, I find that disclosure of the names of the Inheritors would invade the privacy of those individuals to a moderate to high degree. This information reveals that the inheritors had at least some degree of relationship to the deceased, and that they may be entitled to share in the assets of the estate. Disclosure also would reveal information about the deceased, although given the “diminished privacy interest after death” factor, I find that the inherent privacy interest in this information respecting the deceased is low.

...

To conclude, I find that disclosure of the Client Name, Client Address, Last Occupation, Place of Death and Date of Death would not constitute an unjustified invasion of personal privacy within the meaning of section 21(1)(f), and this information is therefore not exempt under section 21(1). Disclosure of the remaining information (Inheritor’s names, Client Account Number and Setup Date) does not qualify for the section 21(1)(f) exception, and this information is therefore exempt under section 21 of the *Act*.

I agree and in drawing my conclusions on a record remaining at issue in this appeal, I will consider whether this is a relevant circumstance.

Analysis and Findings

I found above that there is one listed factor favouring non-disclosure of personal information of the beneficiary of the RIF or the life insurance policy as well as a portion of the pages described by the PGT as being the deceased’s address book. Based on the information contained in the records at issue, I also find that the circumstance of the deceased’s “diminished privacy interest after death” is relevant only to certain limited records, as set out in more detail below.

In accordance with my determination, and the facts of this case, I find that the circumstance favouring disclosure does not diminish the inherent privacy interests of the deceased or other identifiable individuals or outweigh the section 21(2)(h) factor for the following information:

Category One Records

The deceased’s SIN and the name of the beneficiary of the RIF severed from page 17 (duplicated as 63, 108, 275, 416, and 605), the deceased’s SIN severed from page 18 (duplicated by 704), the

name of the designated beneficiary of the RIF and their contact information severed from page 19 (duplicated as 544), the deceased's SIN severed from the tax return at pages 21 to 33 (duplicated as 243 to 255), pages 66 (duplicated as 277 and 471), 68 (duplicated as 280), 69 (duplicated as 282), 70 to 71 (duplicated as 283 to 284), 72 (duplicated as 285), 73 (duplicated as 286), 74 to 75, 92, 99 to 102, 134, 135 (duplicated as 311), the balance of pages 150 to 151 (duplicated as 326 to 327), 202 (duplicated as 377 and 511), 204 (duplicated as 380), 205, 210 to 211 (duplicated as 386 to 387 and 453 to 454), 223 (duplicated as 399), 282, 287, 288 (duplicated as 461), 310, 378 (duplicated at 512), 381, 428 to 429 (duplicated as 442 to 443), 430, 431, 437 to 438, 439 to 441 (duplicated in part as 445 to 447 and 463 to 466), 448, 449 (duplicated as 467), 450 to 451, 455, 456, 457, 458, 459, 460, 462, 468, 486 to 489, 490 to 491, 546, 547, 548, 549, 563, 566, 567 to 569, 590 to 591, 604, 618 to 620, 632, 633, 634 (duplicated by 638), 635, 636, 637, 638, 646, 648, 652, 653, 655, 656, 658, 686 (duplicated as 687), 688, 691, 694, 695, 699, 700, 708, 709, 718, 719, 722, 723, 724, 734, 736, 738, 739, 740, 741, 742, 745 to 746, 747, 748, 749, 750, 751, 752, 753, 760 to 761, 771, 794 to 803, 805, 806, 807 to 808 and 809 and 810.

Category Two Records

The name of the beneficiary of the RIF severed from page 20 (duplicated as 159 and 335), the name of the beneficiary of the small life insurance policy severed from page 40 (duplicated as 121 and 297) and the name of the beneficiary of the small life insurance policy severed from page 41 (duplicated as 120 and 296).

I find that disclosure of this information would constitute an unjustified invasion of personal privacy and it therefore qualifies for exemption under section 21(1) or 49(b) of the *Act*, as the case may be.

I find, however, that on the facts of this case, the circumstance favouring disclosure is relevant to and does outweigh the inherent privacy interests of the deceased or other identifiable individuals for the following information:

Category One Records

The responsive portion of page 111 (duplicated by 419), pages 133 (duplicated by 309), 190, 212 (except for deceased's SIN), 365, 388 (except for deceased's SIN) (duplicated as 469 and 754), 427, the responsive portion of page 452, 525, 533, 592, 621, 626, 627 to 628, 630 to 631, 639 (except for deceased's SIN), 644, 647, 649, 650 to 651 (except for deceased's SIN), 712 to 717, 743 (except for deceased's SIN), 744 (except for deceased's SIN), 757, 762, 763 and 812 (except for deceased's SIN).

Category Two Records

Pages 77, 128 (duplicated as 304), 158 (duplicated as 334), 163 to 164, 192 to 193 (duplicated as 367 to 368 and 558 to 559), 194 (duplicated as 371), 195 (duplicated as 564), 196, 197

(duplicated as 372), 201 (duplicated as 376), 203 (duplicated as 213 and 379), 207 (duplicated as 383), 208 to 209 (duplicated as 384 to 385), 214 (duplicated as 390), 221 (duplicated as 397), 222 (duplicated as 398), 224 (duplicated as 400), 225 (duplicated as 401), 226 (duplicated as 402), 227 to 230 (duplicated as 231 to 234, 260, 403 to 406 and 407 to 410), 235 (duplicated as 411), 236 (duplicated as 412), 237 (duplicated as 413 and 624), 238 to 239 (duplicated as 414 to 415), 240, the unhighlighted portion of page 241, 256, 257, 265, 268, 339 to 340, 369, 370, 389, 444, 470, 473 to 476, 477 to 485, 493 to 510, 560, 562 and 623.

I find that disclosure of this information would not constitute an unjustified invasion of personal privacy and does not qualify for exemption under section 21(1) or 49(b) of the *Act*, as the case may be. Accordingly, I will be ordering that this information be disclosed to the appellant.

THE EXERCISE OF DISCRETION:

Because of the application of section 66(b), the appellant stands in the shoes of his grandmother and is entitled to receive any information to which she would have a right of access under the *Act*. I am also treating the request, where applicable, as encompassing a request for access to any of the appellant's own personal information that may be contained in the records remaining at issue.

Despite any finding that some information falls within the scope of sections 49(a) or 49(b) of the *Act*, the PGT must exercise its discretion in deciding whether or not to disclose the records. This involves a weighing of the appellant and his grandmother's rights of access to their own personal information against any other individual's right to protection of their privacy. On appeal the Commissioner may determine whether the PGT failed to do so.

In addition, the Commissioner may find that the PGT erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose
- it takes into account irrelevant considerations
- it fails to take into account relevant considerations

In such a case, this office may send the matter back to the PGT for an exercise of discretion based on proper considerations [Order MO-1573]. This office may not, however, substitute its own discretion for that of PGT [section 54(2)].

In its representations on the exercise of discretion the PGT submits that:

- it has responded to additional specific questions posed by the appellant, in an effort to address any concerns about how the estate was administered;

- it properly exercised its discretion in its many attempts to accommodate the appellant and his grandmother's concerns about the administration of the estate, as "it appeared that they did not have confidence in the legal advice they received from their original legal counsel in Ontario";
- the only information that remains withheld relates to private information about the deceased which is irrelevant to any concerns about possible wrong-doing by the PGT, or personal information about a third party individual whose privacy must be protected.

That said, in its representations relating to the right of access to one's own personal information, although not particularizing the records by page number, the PGT submits:

A number of records contain personal information about the requester and/or about the heir or her other agents acting in their official capacity, the deceased's parents, place and date of birth, and the heir's own information (birth and marriage). The [PGT] does not object to disclosure of those records insofar as no identifiable information is disclosed about other individuals not acting in their professional or business capacity. Such information would need to be severed from the record disclosed.

Furthermore, in its representations relating to its position that the "absurd result" principle does not apply in the circumstances of this appeal, the PGT submits:

The IPC has raised the exemption of section 49(b) under which the institution has the discretion to refuse to disclose the requester's own personal information if the disclosure of that record would result in an unjustified invasion of another individual's personal privacy. The requester personally has no connection to this estate, nor any personal information forming part of it ...

Findings

The factual statement in the PGT's representations pertaining to the application of the "absurd result" principle is inaccurate, as I have found that the Category Two records contain the personal information of the appellant and/or his grandmother. This much is acknowledged by the PGT when it submits that it remains prepared to disclose "personal information about the requester and/or about the heir or her other agents acting in their official capacity". As noted above, I am treating the request, where applicable, as encompassing a request for access to any of the appellant's own personal information that may be contained in the records remaining at issue. I am not satisfied that the PGT has taken the same approach. I am therefore not persuaded that the PGT has adequately exercised its discretion in applying sections 49(a) or (b) with respect to the Category Two records that were withheld in part, or in full, that I have not ordered to be disclosed to the appellant.

Accordingly, I will include a provision in this interim order requiring the PGT to exercise its discretion with respect to the Category Two records that were withheld in part, or in full, that I have not ordered to be disclosed to the appellant.

ABSURD RESULT

Where the requester originally supplied the information, or the requester is otherwise aware of it, the information may be found not exempt under section 49(b), because to find otherwise would be absurd and inconsistent with the purpose of the exemption [Orders M-444, MO-1323].

The PGT submits that the absurd result principle does not apply. Neither the appellant nor his grandmother make any specific submissions or provide any evidence on the application of this principle.

The absurd result principle has been applied where, for example:

- the requester sought access to his or her own witness statement [Orders M-444, M-451]
- the requester was present when the information was provided to the institution [Orders M-444, P-1414]
- the information is clearly within the requester's knowledge [Orders MO-1196, PO-1679, MO-1755]

If disclosure is inconsistent with the purpose of the exemption, the absurd result principle may not apply, even if the information was supplied by the requester or is within the requester's knowledge [Orders M-757, MO-1323, MO-1378].

In light of my finding on the exercise of discretion discussed above, I will await the results of the PGT's exercise of discretion before making a determination on the application of the absurd result principle in this appeal. Prior to making such a determination I may invite the parties to provide further submissions on this issue.

ORDER:

1. I Order the PGT to disclose to the appellant the severed portions of pages 36 and 38 as well as 77, the responsive portion of page 111 (duplicated by 419), 128 (duplicated as 304), 133 (duplicated by 309), 158 (duplicated as 334), 163 to 164, 190, 192 to 193 (duplicated as 367 to 368 and 558 to 559), 194 (duplicated as 371), 195 (duplicated as 564), 196, 197 (duplicated as 372), 349 to 350 and 361 to 362), 190, 201 (duplicated as 376), 203 (duplicated as 213 and 379), 207 (duplicated as 383), 208 to 209 (duplicated as 384 to 385), 212 (except for deceased's SIN), 214 (duplicated as 390), 221 (duplicated as 397), 222 (duplicated as 398), 224 (duplicated as 400), 225 (duplicated as 401), 226

(duplicated as 402), 227 to 230 (duplicated as 231 to 234, 260, 403 to 406 and 407 to 410), 235 (duplicated as 411), 236 (duplicated as 412), 237 (duplicated as 413 and 624), 238 to 239 (duplicated as 414 to 415), 240, the unhighlighted portion of page 241, 256, 257, 265, 268, 339 to 340, 365, 369, 370, 388 (except for deceased's SIN) (duplicated as 469 and 754), 389, 427, 444, the responsive portion of page 452, 470, 473 to 476, 477 to 485, 493 to 510, 525, 533, 560, 562 592, 621, 626, 627 to 628, 630 to 631, 623, 639 (except for deceased's SIN), 644, 647, 649, 650 to 651 (except for deceased's SIN), 712 to 717, 743 (except for deceased's SIN), 744 (except for deceased's SIN), 757, 762, 763 and 812 (except for deceased's SIN), by sending it to the appellant by **August 4, 2009**.

2. I order the PGT to exercise its discretion regarding the application of sections 49(a) and (b) to the Category Two records that were withheld in part, or in full and that I have not ordered to be disclosed, and to provide me with an outline of the factors considering the exercise of discretion in this context by **August 4, 2009**.
3. In order to verify compliance with provision 1 of this order, I reserve the right to require the PGT to provide me with a copy of the records as disclosed to the appellant.

Original Signed by: _____
Steven Faughnan
Adjudicator

July 3, 2009 _____