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

ORDER PO-2877

Appeal PA07-450

Ministry of Government Services

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NATURE OF THE APPEAL:

The Office of the Public Guardian and Trustee (the OPGT or PGT) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) from a commercial heir tracing company, which requested a copy of the entire estate file for a deceased individual.

The OPGT advised the requester that the decision with respect to the disclosure of two records contained in the requested estate file (a statement of marriage and a statement of death) had been transferred to the Ministry of Consumer and Business Services (now the Ministry of Government Services, referred to in this order as the Ministry).

Subsequently, the requester made a further request directly to the Ministry for access to the same records. In response, the Ministry identified two responsive records and granted partial access to them. Access to portions of the records was denied pursuant to the mandatory exemption at section 21(1) (personal privacy) of the *Act*.

The requester, now the appellant, appealed the Ministry's decision to this office, which appointed a mediator to assist the parties in resolving the issues on appeal. As no issues were resolved at mediation, the appeal was transferred to the adjudication stage of the appeal process, where an adjudicator conducts an inquiry.

I decided to begin my inquiry into this appeal by sending a Notice of Inquiry, setting out the facts and issues, to the Ministry. The Ministry provided representations in response. I then sent a copy of the Notice of Inquiry and the Ministry's non-confidential representations to the appellant, seeking representations. The appellant responded with representations. As the appellant's representations raised issues to which I believed the Ministry should be given an opportunity to reply, I provided the Ministry with a copy of the appellant's representations, in their entirety. The Ministry responded with reply representations.

RECORDS:

The portions of the records that remain at issue in this appeal are described in the index below:

Record	Description of Record	Withheld Information
1	statement of marriage	Information about both the deceased and the groom: • occupation • marital status • religious denomination • address • place of birth • age, citizenship and racial origin • parents names and birthplaces Information about other individuals: • witnesses signatures and addresses

		• signature, church address and religious denomination of the clergy person determining the marriage
2	statement of death	Information about the deceased: • social insurance number • date of birth • place of birth • age at time of death • place of death and description (address, type of location, city, municipality) • name of physician • last name of the spouse of the deceased • occupation and name of business • deceased's usual residence • parents names and birthplaces • type of disposition (burial, cremation or other) • proposed date of disposition Information about other individuals: • name, address, signature, date of birth and relationship to the deceased of the individual providing the information • name and address of proposed cemetery • name and address of funeral home and name of funeral director

DISCUSSION:

PERSONAL INFORMATION

In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains "personal information" and, if so, to whom it relates. That term is defined in section 2(1), in part, 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,
>
> (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

The 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, MO-1550-F, PO-2225].

Section 2(2) addresses information relating to a deceased individual. That section reads:

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

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].

Effective April 1, 2007, the *Act* was amended by adding sections 2(3) and 2(4). These amendments apply only to appeals involving requests that were received by institutions after that date. The request relating to this appeal was filed after April 1, 2007. Section 2(3) 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) is not relevant to this appeal.

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.)].

Representations

The Ministry submits that the statement of death contains the personal information of the deceased, the deceased's parents, and the individual who provided the information for the statement of death (the "informant").

With respect to the information related to the deceased, the Ministry submits:

> [T]he date of birth and place of birth relates to age and national or ethnic origin, the type of information enumerated in the definition of personal information in subsection 2(1)(a). The occupation of the individual qualifies as employment history as enumerated in subsection 2(1)(b), the social insurance number is an identifying number as enumerated in subsection 2(1)(c), and the deceased's usual residence qualifies as the address of the deceased, enumerated in subsection 2(1)(d).

The Ministry also submits that the record relates to an individual who died in the early 2000's; therefore, that section 2(2) does not apply because the individual has not been deceased for 30 years.

With respect to the information related to the deceased's parents the Ministry submits:

> [T]he names and addresses of the parents of the deceased are the personal information of both the deceased and the deceased's parents.
>
> The IPC [Office of the Information and Privacy Commissioner/Ontario] has found that the names and addresses of the parents of a deceased, appearing on a statement of death, constitute the personal information of the parents (Order P-1232, P-1493, PO-2198). However, the Ministry asserts that the information is also the personal information of the deceased, insofar as it reveals who their parents are. This information is intrinsically linked to the deceased individual, as it reveals something about the deceased individual's family background.
>
> In Order PO-2198, the IPC considered previous approaches in determining what assumptions should be applied when determining whether or not it is reasonable to assume that the parents of an individual have been dead for the 20 years required in order for subsection 2(2) to apply. In Order P-1232, the IPC asserted, "in this day and age, it is not uncommon for an individual to live to 95." However, the IPC has adopted the approach taken by the then Assistant Commissioner [Tom] Mitchinson in PO-1886, assuming that a person would have had their child at the age of 20, and applying a life expectancy of 73 years. Accordingly, it would be presumed that a deceased person's parents' personal information would continue to be their personal information for 103 years from the parents' estimated birth dates.
>
> Applying the "103-year rule" to the parents of the deceased individual, it can be assumed that the parents of the deceased would have been 20 in [named year] and died in [named year]. As this is less than 30 years ago, the exception in section 2(2) does not apply to the personal information of the parents on the statement of death.

Finally, the Ministry argues that the statement of death also contains the name, address, and relationship to the deceased, of the informant, the individual who provided the information contained in that statement. The Ministry submits that this information constitutes the informant's "personal information." The Ministry states that "[t]he IPC has considered informant information on a statement of death and has found that this information is the personal information of the informant [P-1232]."

The Ministry submits that the statement of marriage contains the personal information of the deceased individual and the groom, as well as the personal information of both of their parents. The Ministry submits that the personal information about the deceased individual and the groom includes their age at time of marriage, religion, occupation, citizenship/racial origin, address, place of birth, and marital status at the time of the marriage. The Ministry submits that as the deceased died in the early 2000's and given the groom's age at the time of marriage, applying a life expectancy of 73 years, it is reasonable to assume that neither the deceased nor the groom have been dead for 30 years and section 2(2) does not apply.

The Ministry submits that, for the same reasons that it outlined, with respect to information related to the deceased parents in the statement of death, it can be reasonably assumed that the exception in section 2(2) does not apply to the personal information of the deceased's parents that is found in the statement of marriage, specifically, their names and birthplaces. Additionally, the Ministry submits that it can be reasonably assumed that the groom's parents were born in the early 1900's and applying the same analysis as was applied in Order PO-1886, it can be reasonably assumed that the groom's parent's died in the early 1980's which is less than 30 years ago. Accordingly, the Ministry takes the position that the exception in section 2(2) does not apply to the personal information of the groom's parents contained in the statement of marriage.

With respect to the information about the witnesses to the marriage, the Ministry submits:

> There is no evidence with respect to the ages of the witnesses as recorded on the marriage record. The IPC considered a similar record in P-1232, noting that the witnesses could be older than the couple whose marriage they witnessed or they may be younger, and determined that the information qualified as the personal infomraition [sic] of those individuals. The Ministry submits that a similar approach should be applied to the information of the witnesses appearing on the marriage records at issue.

Finally, the Ministry submits that while the information about the clergy person does not qualify as personal information as it amounts to business or professional information, disclosure of the identity of this individual would reveal information about the religion of the parties to the marriage, and therefore qualifies as the personal information of the deceased individual and the groom.

The appellant does not dispute the Ministry's position that the information at issue consists of "personal information" within the meaning of the *Act*. The appellant submits that the majority of the information relates to the deceased and even where the information contains the names of

other individuals, "it is in the context of the individuals' relationship to the deceased and is therefore information about the deceased."

Analysis and findings

Having reviewed all of the information at issue, I find that the majority of it contains information which qualifies as the personal information of several identifiable individuals. However, I find that some of the information in the statement of death relates to an individual's professional capacity and does not qualify as personal information.

I am satisfied that the information that remains at issue in these records includes the personal information of the deceased. Specifically, both the statement of marriage and the statement of death contain her name, together with information such as her national or ethnic origin, religion, age, sex and marital or family status (paragraph (a)), as well as information relating to her medical history (paragraph (b)), and her address (paragraph (d)). The statement of death also contains her social insurance number (paragraph (c)), her employment history (paragraph (b)), and information about her burial arrangements and other personal information about her (paragraph (h)).

The statement of marriage also contains the personal information of the deceased's groom. Specifically, it contains his name together with information including his national or ethnic origin, religion, age, sex and marital or family status (paragraph (a)), as well as his address (paragraph (d)).

Both the statement of marriage and the statement of death contain the names and birthplaces of the deceased's parents. The statement of marriage also contains the names and birthplaces of the groom's parents. In keeping with previous orders issued by this office, I find that this information is about the parents only and do not accept the Ministry's position that this information qualifies as the personal information of the deceased or the deceased's groom [Order PO-2198]. However, I must determine whether the information relating to the parents qualifies as their "personal information" or whether it falls within the ambit of the exception in section 2(2) because it relates to individuals who have been dead for more than 30 years.

Previous orders of this office have made certain assumptions about life expectancy to assist in establishing a date of death for individuals where it cannot be determined from the records [see for example, Orders PO-1886, PO-2198]. Most recently, in Order MO-2467, Adjudicator Colin Bhattacharjee followed the approach taken by former Assistant Commissioner Tom Mitchinson in Order PO-1886 to determine whether personal information contained in a public school's attendance registers from the years 1899 to 1964 fell within the exception in section 2(2) of the *Act*. In Order MO-2467, Adjudicator Bhattacharjee stated:

> The current year is 2009. Consequently, the information in the attendance registers relating to any students or teachers who died in 1979 or before would not qualify as "personal information" because those individuals would have been dead for more than 30 years.

It is challenging, however, to determine whether the information relating to specific students and teachers might fall within section 2(2) of the *Act*, given the large number of individuals in the records and the varying ages of these individuals. The sample records for 1923 contain the birth dates of the students for a particular class, which is helpful in determining whether the information relating to specific students might fall within section 2(2) of the *Act*. However, I have no evidence with respect to the dates of death of any of these individuals, and particularly whether they died in 1979 or before.

…

In Order PO-1886, former Assistant Commissioner Tom Mitchinson found that if an individual's specific date of death is not known, a more reasonable approach to making an assumption about this date is to apply the average life expectancy for the year in which a particular individual was born, not modern-day life expectancy. He stated, in part:

> 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 1800's would, in my view, not be reasonable.
>
> …[I]n circumstances where the actual dates of death are not known, as is the case in these appeals, the figure available from Statistics Canada is a reasonable one to apply in making assumptions regarding the life expectancy of the parents.

The factual circumstances in Order PO-1886 were different than those in the appeal before me. However, I agree with former Assistant Commissioner Mitchinson's general reasoning and will apply it in the circumstances of this appeal.

According to Statistics Canada, a male born in the years 1920 to 1922 had a life expectancy of 59 years and a female born in the same time period had a life expectancy of 61 years (www40.statcan.gc.ca/101/cst01/health26-eng.htm). (I am unable to find any figures for earlier years.) Consequently, I will make the assumption that a person born in 1920 had an average life expectancy of 60 years.

In my view, it is reasonable, based on these statistics, to assume that the average person born in 1919 would have died 60 years later, in 1979. I have already determined that the information in the attendance registers relating to any student or teacher who died in 1979 or before would not qualify as "personal information." Consequently, it would be reasonable to conclude that the

> information relating to any students or teachers in the attendance registers who were born in 1919 or before does not constitute their "personal information," in accordance with section 2(2) of the *Act*. In short, this information cannot qualify for exemption under the personal privacy exemption in section 14(1) of the *Act* and must be disclosed to the appellant.

I agree with Adjudicator Bhattacharjee's approach and will apply it in the current appeal.

In the circumstances of the current appeal, the statement of marriage identifies the ages of both the deceased and the groom and the year in which the marriage took place. From this information one can calculate the year of birth of both the deceased and the groom. In Order PO-1886, former Assistant Commissioner Mitchinson made the assumption that parents listed on a statement of death were 20 years old at the time of their children's births. In following that approach and applying that assumption, based on the year of birth of the deceased and the groom, it is possible to calculate that their parents would have been born in the early 1900's and be over 100 years old in 2010.

In Order MO-2467, based on figures from Statistics Canada Adjudicator Bhattacharjee established the average life expectancy of individuals born between the years 1920 and 1922 as 60 years. In this appeal, as the parents of the deceased and the groom were all born in the early 1900's, twenty years earlier than the individuals in Order MO-2467, assuming a life expectancy of 60 years is a conservative approach. However, as Statistics Canada does not identify life expectancy for individuals born prior to 1920 and it is difficult to determine a more accurate figure I will make such an assumption for the purposes of this appeal.

Accordingly, taking into account the approximate year of birth of the parents of the deceased and the groom, and assuming a life expectancy of 60 years, I find that it is reasonable to conclude that the parents of both the deceased and the groom have been dead for at least 30 years. On this basis, I find that pursuant to the exception at section 2(2), the groom's parents' names and birthplaces listed on the statement of marriage, and the deceased's parents' names and birthplaces listed on the statement of marriage and the statement of death, do not qualify as personal information within the meaning of the *Act*.

I am also satisfied that the statement of marriage contains the personal information of two individuals who witnessed the marriage. In particular, it contains their names together with their addresses (paragraph (d)), which qualify as personal information within the meaning of the *Act*.

With respect to the information in the statement of marriage relating to the clergy person who performed the service (in particular, his name, denomination and address of his church), I accept the Ministry's argument that revealing such information would reveal the religious denomination of both the deceased and the groom, which qualifies as their "personal information" pursuant to paragraph (a) of the section 2(1) definition of that term.

As for the statement of death, in addition to the information about the deceased and her parents, it also contains information about three other individuals: the deceased's spouse, the informant, and the funeral director. I find that the information about the first two individuals is their

personal information. For the deceased's spouse this includes his surname and his relationship to the deceased (paragraph (h)). For the informant this includes his name together with his address (paragraph (d)) and his relationship to the deceased (paragraph (h))

The information about the funeral director includes his name as well as the name and address of the funeral home. In my view, this information relates to the funeral home director in his business, professional or official capacity and, pursuant to section 2(3) of the *Act*, does not qualify as personal information.

In summary, I have found that the groom's parents' names and birthplaces on the statement of marriage, and the deceased's parents' names and birthplaces on the statement of marriage and the statement of death do not qualify as personal information due to the application of the exception at section 2(2) of the *Act*. I have also found that the information relating to the funeral home director and the funeral home on the statement of death does not qualify as personal information within the meaning of the definition of that term in section 2(1) of the *Act*. As only personal information can qualify for exemption under section 21(1) of the *Act*, I find that it does not apply to this information and I will order the Ministry to disclose it to the appellant.

I have found that all of the remaining information in the statement of marriage and the statement of death consists of the personal information of the deceased and other individuals. I will, therefore, go on to determine whether the information that I found qualifies as "personal information" is exempt pursuant to the mandatory exemption under section 21(1).

PERSONAL PRIVACY

Where a requester seeks access to the personal information of another individual, section 21(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 21(1) applies.

If the information fits within any of paragraphs (a) to (f) of section 21(1), it is not exempt from disclosure under section 21. The appellant argues that section 21(1)(f) applies to the circumstances of this appeal.

The factors and presumptions in sections 21(2), (3) and (4) help in determining whether disclosure would or would not be an unjustified invasion of privacy under section 21(1)(f).

If any of paragraphs (a) to (h) of section 21(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 21. The Ministry claims that the presumptions at sections 21(3)(e), (f) and (h) apply to some of the information at issue.

Once established, a presumed unjustified invasion of personal privacy under section 21(3) can only be overcome if section 21(4) or the "public interest override" at section 23 applies. [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767]. The appellant has not claimed that any of the exclusions in section 21(4) apply in the circumstances of this appeal. In my view, section 21(4) has no application to this appeal.

Once a presumed unjustified invasion of personal privacy is established under section 21(3), it cannot be rebutted by one or more factors or circumstances under section 21(2) [*John Doe*, cited above]. If no section 21(3) presumption applies, section 21(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy [Order P-239].

The list of factors under section 21(2) is not exhaustive. The institution must also consider any circumstances that are relevant, even if they are not listed under section 21(2) [Order P-99]. In the circumstances of this appeal, both of the parties claim that listed factors and other circumstances apply and refer to prior decisions from this office in support of their positions.

Section 21(3) presumptions

The Ministry claims that disclosure of the information about the deceased's place of birth, occupation, citizenship/racial origin, and religion on the statement of death and the statement of marriage is presumed to be an unjustified invasion of personal privacy under sections 21(3)(d) and (h). These sections read:

> A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,
>
> (d) relates to employment or educational history;
>
> (h) indicates the individual's racial or ethnic origin, sexual orientation or religious or political beliefs or associations.

Section 21(3)(d) – employment or educational history

The Ministry submits that the disclosure of the occupation of the deceased individual and the groom, identified in the statement of marriage, and the occupation and type of industry that the deceased individual worked in, identified in the statement of death, would amount to a presumed unjustified invasion of privacy as the information reveals the employment history of individuals as contemplated by section 21(3)(d). In support of its position, the Ministry points to Order P-1232 in which it was "found that the occupations shown on the marriage record qualified as employment history, falling within the ambit of the presumption in subsection 21(3)(d)."

The appellant disagrees that the presumption at section 21(3)(d) applies in the circumstances of this appeal and submits:

> [T]he occupation of an individual does not fall within this presumption. Occupation is distinct from employment history. Occupation denotes the field in which an individual works. Such information is clearly different from an individual's employment history, that is where one has worked and for what periods of time.

> The legislature could easily have included occupation in the presumed invasion of privacy grounds; however, they have failed to do so. Rather the legislature has chosen to limit the presumed invasion to the history of an individual's employment and not the field in which that individual works.
>
> Such an interpretation would appear to be consistent with the general perception of privacy in relation to employment matters. Providing information about one's particular place of employment would appear to be of a more private nature than merely the field in which one is employed.

Prior orders of this office have held that a person's name, occupation and employer do not, without more detail, attract the application of the presumption in section 21(3)(d) [Orders P-219, P-235, MO-2103-I]. In Order PO-2298, Adjudicator Frank DeVries found that information related to the prior occupation of a deceased individual and the location of that occupation did not amount to sufficiently detailed information about the "employment history" of the deceased to fit within the presumption in section 21(3)(d) because it was general in nature, without reference to specifics.

In the circumstances of this appeal, the information to which the presumption in section 21(3)(d) might apply is a one word description of the occupations of the deceased and the groom at the time of their marriage and a one word description of the deceased's occupation at the time of her death, as well as the name of her employer. In my view, the information, as it appears in these records, is general in nature as it describes only the type of work done by these individuals and the name of a business for which the deceased worked. It does not contain specifics about their employment history such as the length of time these individuals performed these occupations or the number of years of service with a particular employer. In accordance with Adjudicator DeVries reasoning in Order PO-2298 and having considered the specific information contained in the records at issue, I am not satisfied that it falls within the ambit of the presumption listed at section 21(3)(d) of the *Act*.

Section 21(3)(h) – racial or ethnic origin, sexual orientation, religious or political beliefs or associations

The Ministry submits that the information about the birthplaces of the deceased and the groom consists of information about the ethnicity of these individuals and falls within the ambit of the presumption at section 21(3)(h). The Ministry submits that the information relating to the deceased and the groom's religious denomination and racial origin that appears on the statement of marriage also falls within the ambit of the presumption at section 21(3)(h). The Ministry takes the position that disclosure of this information is presumed to constitute an unjustified invasion of the personal privacy of the individuals to whom it relates.

The appellant disagrees that the presumption at section 21(3)(h) applies in the circumstances of this appeal and submits:

> [T]he place of birth of the deceased and even the place of birth of the deceased's parents is not indicative of the individual's racial or ethnic origin. Individuals and

> families frequently move homes, countries and even continents. In fact, many Canadian families have lived in Canada for generations, while their racial or ethnic origins stem from across the globe.
>
> Birthplace information about the deceased is important and helpful in recreating the family history and settling the estate however it is hardly indicative of the racial or ethnic origins of an individual.

Previous orders issued by this office have found that information concerning an individual's birthplace can indicate their "ethnic origins" and falls within the scope of section 21(3)(h) [Orders PO-1923, PO-1936]. I have carefully reviewed the information at issue and, in keeping with prior orders issued by this office, I am satisfied that information describing the birthplace and ethnic origin of the deceased and the groom, as well as their religious denomination, falls within the section 21(3)(h) presumption. I also find that disclosure of the signature, church address and religious denomination of the clergy person could reasonably be expected to reveal the religious denomination of the deceased and the groom and accordingly also falls within the section 21(3)(h) presumption. I find, therefore, that disclosure of this information is presumed to be an unjustified invasion of personal privacy of the individuals to whom it relates. As none of the exceptions in section 21(4) apply to this information and the public interest override is not applicable in this appeal, I find that its disclosure is presumed to be an unjustified invasion of that individual's privacy and the information is exempt pursuant to section 21(1) of the *Act*.

I will now determine whether the following personal information, which does not fall within the ambit of a presumption, qualifies for exemption under section 21(1) of the *Act*:

In the Statement of Marriage

- the occupations of the deceased and the groom;
- the marital status of the deceased and the groom;
- the address of the deceased and the groom;
- the age of the deceased and the groom;
- the witnesses' signatures and addresses

In the Statement of Death

- the deceased's Social Insurance Number
- the deceased's date of birth
- the deceased's age at time of death
- place and location of death
- name of the physician who pronounced the death
- the deceased's marital status
- last name of the spouse of the deceased
- the occupation and business in which the deceased worked most of her life
- deceased's usual residence
- name, address, signature, date of birth and relationship to the deceased of the individual providing the information for the Statement of Death

- burial information (type of disposition, proposed date and name and address of proposed cemetery)

Section 21(2)

As noted above, section 21(2) of the *Act* lists factors to be considered when determining whether the disclosure of personal information constitutes an unjustified invasion of personal privacy.

The Ministry claims that the factor favouring non-disclosure at section 21(2)(h) applies and the appellant claims that the factors favouring disclosure at sections 21(2)(a) and (c) apply. The appellant also takes the position that the factor favouring non-disclosure at section 21(2)(e) does not apply. These sections 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,
>
> (a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny;
>
> (c) access to the personal information will promote informed choice in the purchase of goods and services;
>
> (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
>
> (h) the personal information has been supplied by the individual to whom the information relates in confidence;

Also, as noted above, the list of factors under section 21(2) is not exhaustive. The institution must also consider any circumstances that are relevant, even if they are not listed under section 21(2) [Order P-99]. Both parties also claim that other circumstances weighing for and against disclosure apply in the circumstances of this appeal. In particular, in their representations both parties address the following circumstances:

- reasonable expectation of confidentiality;
- identity theft;
- diminished privacy interest after death, and;
- benefit to unknown heirs.

Section 21(2)(a) – public scrutiny

The appellant submits that the disclosure of the information at issue is desirable for the purpose of subjecting the activities of the Ministry to public scrutiny. The appellant states:

> The disclosure of information with respect to estates under the OPGT's administration permits the public to monitor its efficiency in dealing with these important matters. More specifically, it permits the public to judge whether government resources (tax dollars) are being used efficiently and effectively. The criticism of the OPGT's performance contained in the 1999 Report of the Provincial Auditor provides ample evidence that such public scrutiny is necessary and desirable. Beneficiaries are assisted when the prompt, efficient distribution of estates is promoted. The public interest is served when the OPGT is motivated by public scrutiny to minimize the inefficient use of public resources.

The Ministry submits that prior orders of this office have held that a private interest is not sufficient to meet the requirements of section 21(1)(a) [Orders P-828, PO-2420]. The Ministry submits:

> [T]he appellant's interest in the personal information at issue in this appeal constitutes a private interest. Specifically, the appellant is requesting personal information from the Ministry for its own commercial interest.
>
> In Order PO-2260, the IPC considered the application of subsection 21(2)(a) in relation to personal information about clients of the OPGT (name, address, last occupation, place of death, and date of death). The appellant argued that subsection 21(2)(a) favoured disclosure, as the disclosure of the information would permit the public to monitor the efficiency of the OPGT administration of estates. The IPC found section 21(2)(a) was not a relevant factor. The IPC was not persuaded that disclosure of the records at issue was desirable for the purpose of subjecting the activities of the OPGT to public scrutiny, particularly in light of the nature of the information requested as this information would not, in fact, achieve that purpose.
>
> The Ministry submits that the reasoning in [Order] PO-2260 is applicable to the present situation. The appellant has not submitted any justification for a finding that public scrutiny is desirable in the matters at issue and how disclosure of the information sought may achieve the objective of subjecting the activities of the OPGT to public scrutiny.

Analysis and finding

Prior decisions from this office have found that the factor at section 21(2)(a) did not apply to information the OPGT gathered for the purposes of tracing the heirs of unclaimed estates [see for example Orders PO-1717, 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.)] and PO-2260]. In Orders PO-1717 and PO-2260, this office specifically rejected the appellant's argument that the 1999 Report of the Provincial Auditor supports a position that section 21(2)(a) is a relevant factor weighing in favour of disclosure of information in the OPGT's custody gathered for heir tracing purposes. In Order PO-1717, former Assistant Commissioner Mitchinson stated:

> The appellant carries on the business of heir tracing, and has made this request in the ordinary course of his business activity. The appellant's representations on this issue do not persuade me that a public scrutiny concern exists, nor how disclosure of the particular record at issue in this appeal is desirable for the purpose of subjecting the Office of the Public Guardian and Trustee to public scrutiny. Accordingly, I find that section 21(2)(a) is not a relevant consideration.

In my view, the findings in Orders PO-1717, PO-1736 and PO-2260 are relevant in the current appeal. I have carefully considered the circumstances together with the appellant's representations and am not satisfied that disclosure of the personal information remaining at issue is desirable for the purpose of subjecting either the Ministry, or the OPGT, to public scrutiny. As a result, I find that the factor favouring disclosure at section 21(2)(a) has no application in this appeal.

Section 21(2)(c) – promote informed choice in purchase of goods and services

The appellant argues that section 21(2)(c) is a relevant factor favouring disclosure because the existence of its business creates competition to the services of the OPGT which "can serve to motivate the OPGT to achieve greater levels of efficiency and accountability." In support of this position, the appellant states:

> It may be suggested that there is something inherently less desirable about a private, for-profit organization assisting beneficiaries of estates than a government agency. What [the appellant] provides, however, is a choice for beneficiaries. Beneficiaries contacted by [the appellant] are free to engage the services of [the appellant], and pay a mutually acceptable fee for such services, or to decline the offer of assistance. Those who accept the offer of assistance benefit from the prompt, tailored and expert services [the appellant] provides. Those beneficiaries who decline the offer of assistance have nonetheless benefited from [the appellant's] efforts, as they have been notified of a potential entitlement and may be able to make their own arrangements to claim their inheritance.

The Ministry disagrees with the appellant's position that providing it with personal information to seek out potential heirs will promote an informed choice in the purchase of goods and services as contemplated by section 21(2)(c). The Ministry submits:

> This argument was considered and rejected by the IPC in [Order] PO-2298 in relation to a request to the OPGT for a copy of the files for 14 named deceased individuals. In [Order] PO-2298, the IPC held that this factor did not apply to allow access to otherwise protected personal information for commercial purposes, merely to market the appellant's services.
>
> This argument was also considered and rejected by the IPC in [Order] PO-2260 in the context of an heir tracer appeal. The IPC held in this case that the appellant was referring to a "viable choice" provided to beneficiaries if the personal information were to be disclosed, the appellant's arguments in support of the

> position concerned the "benefits" of identifying, locating, and notifying unknown heirs. The IPC found this was not a relevant consideration because the very same considerations were addressed under the unlisted factor of "benefit to unknown heirs."
>
> In [Order] PO-2298, the IPC also held that the appellant's only reliance on section 21(2)(c) was based on the position that it could use the information at issue to offer its services to beneficiaries. Accordingly, the IPC held that section 21(2)(c) did not apply in the circumstances. The Ministry submits that the appellant is seeking the information to offer services to beneficiaries and this is clearly not the intention of section 21(2)(c) [See also Order P-309].
>
> Further, the Ministry submits that the appellant has not demonstrated that disclosure of personal information will promote choice. The Ministry understands that the appellant will be contacting potential beneficiaries and advising them of their entitlement to estate funds. However, the Ministry has no indication that the appellant will be disclosing to the beneficiaries that they could access the funds directly from the OPGT should they choose not to accept the appellant's services. Consequently, it is not clear that the provision of the appellant's services will promote informed choice.

Analysis and finding

Having considered the representations of the appellant and the prior orders referenced by the Ministry, I am not satisfied that the appellant's evidence demonstrates that disclosure will promote informed choice in the purchase of heir tracing services and that a different approach than that taken in Orders PO-2260 and PO-2298 should be considered.

The appellant made a very similar argument in Orders PO-2260 and PO-2298. In those Orders, Adjudicator DeVries found that section 21(2)(c) had no application. In Order PO-2260 he stated:

> Based on the representations of the appellant, I am not persuaded that this factor is relevant in this appeal. Although the appellant's representations refer to the "viable choice" provided to beneficiaries if the personal information is disclosed, the appellant's arguments in support of this position concern the "benefits" of identifying, locating and notifying unknown heirs. These considerations are addressed under the unlisted factor of "benefit to unknown heirs" set out below.
>
> With respect to the appellant's position that providing him with the information would allow him to approach the beneficiaries and provide his services, [former] Assistant Commissioner Tom Mitchinson addressed this issue in Order P-309. That appeal arose as a result of a request made to the Ministry of Consumer and Commercial Relations for a list of the names and addresses of all babies born in Ontario in a given year. The requester took the position that the disclosure would

promote informed choice of goods and services under section 21(2)(c). The Assistant Commissioner rejected the requester's claim and stated:

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

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

In Order PO-2298, Adjudicator DeVries followed the same approach as he did in PO-2260 and found that the factor at section 21(2)(c) did not apply.

In the current appeal, I agree with and adopt the approach to this issue as was taken in Orders PO-2260 and PO-2298. Based on the evidence provided by the appellant, I am not satisfied that the evidence supports a finding that disclosure of the specific information at issue will promote informed choice in the purchase of heir tracing services. Accordingly, I find that the factor listed in section 21(2)(c) does not apply in the circumstances of this appeal.

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

The appellant submits that in previous appeals, the Ministry has taken the position that disclosure of similar information would unfairly expose the individuals to whom the information relates to pecuniary or other harm. The appellant also submits that the Ministry has previously submitted that the application of this section extends to the beneficiaries of the deceased. The appellant disagrees with the positions previously taken by the Ministry and submits that section 21(2)(e) has been found not to be a relevant factor in the determination of whether the disclosure of the information at issue would amount to an unjustified invasion of privacy. He points to Order PO-1790-R where Senior Adjudicator David Goodis stated:

> [The OPGT] 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 submits that providing beneficiaries with a free choice as to whether to engage its services, even for a fee, cannot reasonably be described as causing pecuniary or other harm to the estate of the beneficiaries. To support his position, the appellant points to Order PO-1936 in which former Assistant Commissioner Mitchinson stated:

> As far as the heirs or potential heirs are concerned, I accept that in circumstances where an estate has not escheated to the Crown, that heirs or potential heirs could

> be contacted by the OPGT, private heir tracers and/or a consulate, and that different fees could be involved, depending on the circumstances. However, based on the appellant's representations in this case, I am not persuaded that any fees charged by his client in this regard would expose any heirs or potential heirs to pecuniary or other harm or, more particularly, that any such exposure would be unfair. Accordingly, I find that section 21(2)(e) is not a relevant consideration in this appeal.

The appellant further submits that not only has it not caused harm to heirs, it has actually generated financial benefit for them on a number of occasions. An affidavit sworn by in-house counsel for the appellant explains that the appellant's services include a thorough review of the treatment of funds and the interest paid on those funds to determine whether there has been an underpayment made to the detriment of the estate and its heir. The affidavit also lists examples of circumstances where, even after the payment of its fee on the total amount recovered in an estate, more money has been paid to the heir than would have been paid had the OPGT found the heir itself.

Although the Ministry did not initially rely on section 21(2)(e), its reply representations state that, based on the wording of section 21(2)(e), its application is not limited to the deceased because it applies to "the individual to whom the information relates." The Ministry therefore submits that section 21(2)(e) also applies to potential beneficiaries of an estate. The Ministry states:

> The Ministry is not at all certain that potential beneficiaries are provided with the information necessary to make an informed choice. In this regard, the Ministry submits that a potential beneficiary should be presented with information regarding the fact that estate funds can be accessed directly from the OPGT.
>
> Without this information, a beneficiary cannot make an informed choice. In fact, without being offered this choice, a potential beneficiary could face significant financial consequences. The appellant has submitted that a potential beneficiary must agree to pay a fee in the amount of 35 – 39% of the value of the estate to access his or her share. The appellant has provided no evidence to demonstrate the fees it charges are proportionate or fair in the circumstances. Rather, on their face, the Ministry submits that the fees charged by the appellant are unreasonable.

The Ministry argues that the costs charged by the OPGT are regulated by legislation and are significantly lower that those charged by the appellant; therefore, an heir engaging the services of the appellant would pay higher fees. The Ministry submits that if an heir signed a contract with the appellant when the OPGT is actively searching for an heir and the OPGT contacts him shortly thereafter, given that the OPGT's fees are charged to the estate, the heir may be exposed unfairly to pecuniary or other harm.

Analysis and finding

Previous decisions from this office have addressed the issue of whether section 21(2)(e) applies to information about potential beneficiaries [Orders PO-1736, PO-1936, PO-1790-R, PO-2260 and PO-2298]. These orders found that the factor favouring disclosure at section 21(2)(e) did not apply to the information the OPGT collected about potential beneficiaries. In Order PO-1936 former Assistant Commissioner Mitchinson stated:

> The parties have submitted conflicting representations on this factor. Based on the material before me, I do not accept that this factor is applicable to the remaining information that relates to the deceased individual. As far as the heirs or potential heirs are concerned, I accept that in circumstances where an estate has not escheated to the Crown, that heirs or potential heirs could be contacted by the [OPGT], private heir tracers and/or a consulate, and that different fees could be involved, depending on circumstances. However, based on the appellant's representations in this case, I am not persuaded that any fees charged by his client in this regard would expose any heirs or potential heirs to pecuniary or other harm or, more particularly, that any such exposure would be unfair. Accordingly, I find that section 21(2)(e) is not a relevant consideration in this appeal.

In the circumstances of this appeal, the Ministry has provided similar representations to those provided in the orders that have previously dealt with this factor. In my view, it has not provided sufficient evidence to demonstrate that the disclosure of the personal information at issue would unfairly expose either the individual to whom the information relates or potential beneficiaries of the estate to pecuniary or other harm. Additionally, I accept the appellant's submission that the potential heirs are free to either reach an agreement with an heir tracer, or not. Accordingly, I find that section 21(2)(e) has no application in this appeal.

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

The Ministry submits that the factor at section 21(2)(h) is a relevant consideration in favour of the non-disclosure of the name and address of the informant, and the relationship of the informant to the deceased, as it appears on the statement of death. The Ministry submits:

> The [*Vital Statistics Act*] VSA has historically been a confidentiality statute, predating the [*Act*]. The current VSA contains the following confidentiality provision:
>
> > Secrecy
> > 53. (1) No division registrar, sub-registrar, funeral director, person employed in the service of Her Majesty, or other prescribed person shall communicate or allow to be communicated to any person not entitled thereto any information obtained under this Act, or allow any such person to inspect or have access to any records containing information obtained under this *Act*.

> Due to the nature of a death registration, personal information contained therein is provided by an informant rather than by a person to whom the death registration relates. The Ministry submits that the informant supplied this information to the Ministry with an expectation of confidentiality. In Orders P-309 and PO-1923, the IPC found that this was a factor relevant to subsection 21(2)(h).
>
> In Order PO-1923, the IPC accepted the Ministry's position that an informant would have a reasonably held expectation that the information provided would be kept confidential except when used for purposes connected to the death of an individual. However, this factor was given little weight in the circumstances of the appeal, and the need to use the information to administer the estate [sic]. While this factor may have been given little weight in the context of PO-1923 where the deceased individual had been dead for 21 years, the Ministry submits that this factor should be given significant weight in the context of the current appeal, where the deceased individual has only been dead for 2 years.
>
> It is the Ministry's submission that the informant had a reasonable expectation of confidentiality at the time they supplied information on the statement of death, and that expectation of confidentiality continues to be strong due to the short amount of time that has passed. Given the informant's reasonable expectation of confidentiality, subsection 21(2)(h) is a relevant consideration favouring privacy protection.

In response to the Ministry's position on the application of the factor at section 21(2)(h) in the circumstances of this appeal, the appellant submits:

> As acknowledged by the Ministry, this factor can only be of relevance to the information provided by the informant that pertains directly to the informant himself. The Ministry submits that this factor should be afforded greater weight in this case than in Order PO-1923 because here the deceased individual has only been dead for 2 years. However, in Order PO-1923, the IPC gave little weight to this factor because of the "nature of the information and the needs to use it in ways which would require disclosure in order to effectively administer estates." [The appellant] submits that irregardless [sic] of the length of time the individual has been deceased, the information provided by the informant is still similar in nature to the information considered in Order PO-1923 and therefore this factor ought still to be given little weight in this appeal.

Analysis and finding

In Order P-309, former Assistant Commissioner Mitchinson found that section 21(2)(h) was a relevant consideration weighing against the disclosure of information contained on the statement of live birth forms filed under the VSA. In Order PO-1923, which addressed information contained on a statement of death where the deceased had been dead for 21 years, he attributed little weight to it. In Order PO-1923, the former Assistant Commissioner referred to Order P-309

and distinguished information provided on statements of live birth from information provided on statements of death. He stated:

> Order P-309 dealt with a request by a baby food manufacturer for access to information provided by parents regarding their children contained on the "Statement of Live Birth" forms filed with the Ministry under the VSA. The form included a statement outlining the authority for collecting the information, and listed the purposes for which the registration information would be used. In those circumstances, I found that "it would be reasonable for a parent to infer from the statement that the information on the form would be kept confidential except in the circumstances outlined on the form." No such statement or similar indication regarding the intended use of the information is contained on the form which is the record at issue in the present appeal, and it is clear that the uses of information on a "Statement of Death" form are different from those relating to information contained in a "Statement of Live Birth" form. I accept the Ministry's position that an "informant" would have a reasonably held expectation that the information provided would be kept confidential except when used for purposes connected to the death of an individual, and that this would include the administration of estates. However, given the nature of the information and the need to use it in ways which would require disclosure in order to effectively administer estates, I find that the section 21(2)(h) factor carries low weight in these circumstances.

I agree with and adopt the approach taken by the former Assistant Commissioner in Order PO-1923.

In the circumstances of this appeal, the Ministry claims that the factor at section 21(2)(h) is a relevant consideration with respect to the disclosure of the name and address of the informant and their relationship to the deceased, as it appears of the statement of death. I accept the Ministry's position that based on the provisions of the VSA, the informant would have a reasonably held expectation that the information provided on the statement of death, including their own information, would be kept confidential except when used for purposes connected to the death of the individual to whom the statement relates, including the administration of her estate. Accordingly, I accept that the factor at section 21(2)(h) is a relevant factor that weighs in favour of non-disclosure of the information.

However, given that disclosure of the information would be for purposes connected to the death of the individual to whom the statement relates, in particular, the administration of her estate, and following Order PO-1923, I find that the section 21(2)(h) factor carries low weight in these circumstances. In my view, given that this is information about the informant, and not the deceased herself, the fact that the deceased has been dead for 2 years, as opposed to the 21 years in Order PO-1923, does not significantly impact the weight that should be attributed to this factor because, regardless of the number of years that has passed, disclosure would be for purposes connected to the administration of the estate. Therefore, I do not accept the Ministry's argument that the factor at section 21(2)(h) should be afforded "significant weight."

Accordingly, in my view, the factor at section 21(2)(h) is a factor that carries low weight and favours non-disclosure of the information.

Reasonable expectation of confidentiality

The Ministry submits that a "reasonable expectation of confidentiality" is a relevant consideration in the circumstances of this appeal because the records at issue are governed by the VSA, which is a confidentiality statute. The Ministry submits that section 53(1) of the VSA (as cited above) provides that information and records obtained under the VSA must not be disclosed, and that section 2 of that statute provides that such information and records must be safeguarded. The Ministry takes the position that because of the "strong confidentiality protection given to the information at issue in this appeal, it is submitted that the individuals identified in the records have a reasonable expectation of privacy."

The Ministry further submits:

> [T]he fact that the Legislature afforded a high level of privacy protection to the information governed by the VSA and at issue in this appeal is a significant factor indicating that disclosure of the information would constitute an unjustified invasion of personal privacy.
>
> Jurisprudence on the "reasonable expectation of privacy" has indicated that the statutory framework upon which records exist is an important factor (*Cheskes v. Ontario (Attorney General),* [2007] O.J. No. 3515). The Supreme Court of Canada has further found that the place where the information was obtained and whether the information constitutes a "biographical core of personal information" that would reveal intimate details of the lifestyle and personal choices of the individual is also determinative of a reasonable expectation of privacy (*Schreiber v. Canada (Attorney General)* [1998] S.C.J. No. 42; *R. v. O'Connor* [1995] 4 S.C.R. 411). It is respectfully submitted that the statutory framework of the VSA, combined with the nature of the information in the records at issue, gives rise to a reasonable expectation of confidentiality.
>
> Given the statutory framework of the VSA, and the corresponding expectation of privacy of the individuals identified in the records, it is submitted that the factor of expectation of confidentiality must be considered as an important factor against disclosure of the information at issue.

The appellant submits:

> [T]here is no reasonable expectation of privacy in regards to the information requested. It would be reasonably expected that information provided in a death registration would be used in relation to the death of that individual. One such activity relating to the death of an individual is the settling of the deceased's estate. This is the precise reason for [the appellant's] request, that the unknown heirs be found and the estate settled.

> [The appellant] further submits that in relation to the information provided in the marriage registration, there too is no reasonable expectation of privacy. Marriage by nature is a public institution. Marriage is a public declaration of the relationship between two parties. It is publicly recognized and publicly supported. Spouses are afforded special status and public funds aid spouses, through pension plan benefits and other programs. In light of the public nature of marriage, there can be no reasonable expectation of privacy in regards to the information relating to the marriage as outlined in the marriage registration.

In its reply representations, the Ministry submits:

> With respect to the information on the statement of death, the Ministry further submits that although there may be a reasonable expectation that the information would be released in the administration of the estate, that expectation would be that the information would be released to the estate trustee, or with the consent of the estate trustee, only.
>
> With respect to the information on the statement of marriage, the Ministry respectfully submits that the appellant is incorrect in the characterization of this information as a public declaration. Instead, the Ministry submits that people may want to keep details of past relationships in confidence. One cannot presuppose whether individuals have a preference and therefore the Ministry submits that maintaining confidentiality is preferable.

Analysis and finding

In the circumstances of this appeal, I accept the Ministry's position that based on the provisions of the VSA there is a reasonable expectation that personal information provided on a statement of marriage or a statement of death would be kept confidential, except when information on a statement of death is required for purposes connected to the death of the individual, in particular, the administration of their estate. Accordingly, I accept that the unlisted factor, reasonable expectation of confidentiality, is a relevant factor that weighs in favour of non-disclosure of the information.

However, I do not agree with the Ministry's suggestion that the information at issue constitutes a "biographical core of personal information" that would reveal intimate details of the lifestyle and personal choices as considered by the Supreme Court of Canada in *Schreiber*. Given the nature of the information and the fact that disclosure of the information would be for purposes connected to the death of the individual to whom the statement relates, in particular, the administration of her estate, I find that this unlisted factor carries low weight in these circumstances. Accordingly, in my view, the unlisted factor, reasonable expectation of confidentiality, carries low weight in favour of non-disclosure of all of the information at issue.

Identity theft

The Ministry submits that a relevant circumstance in determining whether the disclosure of the personal information at issue would constitute an unjustified invasion of privacy is "the risk of the personal information being used by members of the public to perpetrate the crime of identity theft." The Ministry submits that "[a] person's name, combined with their date of birth, gender, last known address and parents' name, is data that is particularly sensitive to being used for identity theft." The Ministry also submits that the disclosure of a person's residential address poses a particular risk of identity theft, as it can be used to steal that person's mail or have it redirected in an effort to collect credit cards, bank statements, tax information or other personal data. The Ministry further submits that the issue of identity theft raises concerns relating to the factor listed in section 21(2)(i) (damage to reputation) as an identity thief could engage in fraudulent or other criminal acts while using the individual's information. The Ministry points to the publications *Identity Theft: Who's Using Your Name,* issued by this office in June 1997, and *Identity Theft Revisited: Security is Not Enough*, issued by this office in September, 2005 in support of its arguments.

The Ministry also addresses a prior order that discussed the relevance of identity theft:

> The IPC has considered the potential misuse of personal information for identity theft as a factor in [Order] PO-2198, according it little weight, given the sparse amount of personal information at issue in the appeal. In this decision, the IPC noted that in different circumstances, the consideration of identity theft may have greater relevance and be afforded greater weight. The Ministry submits that given the large amount of personal information at issue in this appeal, and the fact that it relates to a number of parties, including 2 parties that could still possibly be alive, this factor should be accorded greater weight. Moreover, given the increased presence of this crime in society today, the risk of identity theft resulting from disclosure must be strongly weighed in favour of privacy protection and against disclosure.

The appellant disagrees with the Ministry's position with respect to identity theft because, it submits, were the information disclosed to it the provisions of the *Personal Information Protection and Electronic Documents Act* (*PIPEDA*) would apply and the disclosure of the information would not be equivalent to disclosure to the world at large. The appellant also submits that "there is no evidence to suggest that it is unwilling or incapable of reasonably protecting the information received which ought to raise concerns of potential identity theft problems."

Responding to the Ministry's reference to Order PO-2198, the appellant submits:

> In Order PO-2198, the IPC discussed the issue of identity theft in regard to 14 requests for death registrations. The IPC noted that the "personal information contained in [the] records relating to the deceased persons and their parents is, to say the least, sparse." The IPC continued that the records at issue could not "reasonably be used to assist in perpetrating 'identity theft' or some other

> fraudulent activity." While the IPC noted that the issue could be afforded greater weight in regards to different types of information, the information in the case before us is largely similar to that being considered in Order PO-2198.

Analysis and finding

As noted by the Ministry, the relevance of "identity theft" was previously addressed by Adjudicator Donald Hale in Order PO-2198 which dealt with access to information contained on the death registrations (Statement of Death) for 14 named individuals. I agree with the appellant, for the most part, the information at issue in the current appeal is very similar to that being considered in Order PO-2198. In Order PO-2198 the specific information at issue consisted of the day and month of birth of the deceased, their place of birth, their usual or last known address, and their parents' names and birthplaces. Additionally, in that appeal, the Ministry had previously agreed to disclose the deceased individuals' information, such as: year of birth, date of death, town and municipality of death, marital status, sex, age at death, and the names of parents who were born in 1910 or earlier. In my view, the information at issue in Order PO-2198, together with the information that the Ministry had already disclosed to the appellant is very similar to the information at issue in the current appeal.

In my view, the information that relates to the deceased can be divided into two categories: the information that appears on the statement of marriage (her occupation at time of marriage, marital status, address, and age) and the information that appears on the statement of death (social insurance number, date of birth, age at time of death, place and location of death, physician, burial information, usual or last known residence). The information found on the statement of marriage was provided in 1953, which is over fifty years ago. In comparing it against the information found on the statement of death it is clear that it is no longer current. In my view, the evidence before me is not sufficient to demonstrate that the disclosure of the particular information on the statement of marriage, given its age and nature, could reasonably be expected to be of any use to an identity thief or raise concerns relating to damage to the reputation of the individuals to whom it relates as contemplated by the factor at section 21(2)(i). Accordingly, I find that "identity theft" is relevant but should be attributed low weight for the deceased's information as it appears on the statement of marriage.

However, I come to a different conclusion with respect to the deceased's information, as found on the statement of death. This information was provided at the time of death in 2006, which is only several years ago. In my view, it is reasonable to assume that this information could be appropriated and used in a manner that would facilitate identity theft. Accordingly, for the information relating to the deceased found on the statement of death, I find that "identity theft" is relevant and carries significant weight for this information.

The information that relates to the groom found on the statement of marriage includes his name, occupation at time of marriage, marital status prior to the marriage, address and age. In keeping with my finding above, given that this information was provided at the time of marriage in 1953 and based on my review of the actual information itself, in my view, due to its nature and age, it is unlikely to be relevant or of any use to an identity thief and it could not reasonably be expected to result in damage to his reputation within the meaning of section 21(2)(i).

Accordingly, I find that "identity theft" is relevant but should be attributed only low weight for this information.

As with the groom's information, the signatures and addresses of the witnesses to the marriage were provided in 1953. I accept that a signature together with an individual's address is sensitive information potentially subject to identity theft, but in my view, in the circumstances of this appeal, the passage of time lessens this concern. In particular, the likelihood of the addresses being the current "last known" addresses for those individuals is slim. Accordingly, I find that "identity theft" is relevant but should be attributed low weight for this information.

With respect to the information on the statement of death relating to the informant (name, address, signature, date of birth and relationship to the deceased) given that this information was provided in 2006, which is only 4 years ago, it is reasonable to assume that this information is current and could be appropriated by an identity thief and used to commit fraud. Therefore, I accept that "identity theft" is relevant and carries significant weight for this information.

Finally, I will address the last name of the deceased's spouse as it appears on the statement of death. In my view, disclosure of his last name alone could not reasonably be used to assist in perpetrating "identity theft" or some other fraudulent activity or cause damage to his reputation within the meaning of the factor at section 21(2)(i). Accordingly, I find that the circumstance of "identity theft" does not apply to this information.

Diminished privacy interest after death

The Ministry submits that "diminished privacy interest after death," a circumstance which has been found relevant in previous orders, should be applied with caution. The Ministry submits that in Order PO-1936 the factor was given "low weight" for information related to an individual who had been deceased for two years; that in Order PO-2240 it was given "no significant weight" for information related to an individual who had been deceased for one year; and in Order PO-2198 it was given "little weight" for information related to an individual who had been deceased for three years.

The Ministry submits that, in the circumstances of this appeal, the individual has been dead for less than two years (at the time representations were submitted) and following the previous orders, the factor of diminishing privacy interest after death should be afforded "no significant weight." The Ministry also argues that given that there is no evidence that either the groom or the informant who supplied the information for the statement of death are dead "diminished privacy interest after death" should be given no weight to the personal information relating to them. The Ministry submits:

> In Order P-1232, the IPC found that where there is no evidence indicating that the individual is in fact dead, the factor of diminishing privacy interest after death is not relevant. It is the Ministry's submission that this factor should not be applied to the groom, witnesses to the marriage, and the informant.

In response, the appellant submits:

> In the present case, [the appellant] is requesting the disclosure of information that is not highly sensitive and in circumstances where, it has been consistently held, there is a reduction in the privacy interests of the deceased individual. The Ministry refers to section 2(2) of the *Act* which specifically provides that after an individual has been deceased for 30 years [they] no longer have personal information and as such, argue that after only two years,, this factor should be given little weight … [The appellant] does not submit that the privacy rights are eliminated but rather that the privacy rights are reduced. Such a reduction is not contrary to section 2(2) of the *Act* which provides that after 30 years, the privacy rights are eliminated altogether. The unlisted factor of diminished privacy after death is merely a factor to be weighed in the determination as to whether disclosure would constitute an unjustified invasion of personal privacy.

Analysis and finding

Previous orders issued by this office have considered "diminished privacy interest after death" as a circumstance weighing in favour of disclosure and where more than one year has passed since the date of death it has been found that this should be attributed moderate weight [See for example: 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.)), and Orders PO-1936, PO-2240, PO-2260, PO-2298 and PO-2623]. In Order PO-2260, Adjudicator DeVries stated:

> [Former] Assistant Commissioner Mitchinson recently considered whether the "diminished privacy interest after death" factor applies where an individual had been dead for less than 12 months. In Order PO-2240, he first reviewed his findings that there existed a diminished privacy interest after death in PO-1717 and PO-1936. He then stated:
>
> > In the current appeal, the deceased died on December 3, 2002, less than four months before the appellant submitted his request to the OPGT under the *Act*. Although I accept that an individual's privacy interests begin to diminish at the time of death, four months is too short a period of time for any meaningful diminishment to have occurred. As identified in Order PO-1936, this unlisted factor must be applied with care, taking into account the fact that section 2(2) establishes some degree of privacy interest until 30 years following death. While each case must be assessed on its own facts, and the weight accorded to this unlisted factor will vary according to the length of time an individual has been dead, in my view, it would be inconsistent with the policy intent of section 2(2) to attribute any significant weight to this unlisted factor for at least the first year following death.

> I accept the approach taken by Assistant Commissioner Mitchinson in applying the unlisted factor of a "diminished privacy interest after death." As established in Order PO-2240, I do not attribute any significant weight to this unlisted factor for at least the first year following death.
>
> However, after one year following the date of death, I find that this factor is to be attributed weight of some significance. In Order PO-1736 (upheld by the Divisional Court), Senior Adjudicator Goodis had to decide whether this factor applied where, at the time of the request, the deceased individual had been dead for approximately two years. He found that the factor of "diminished privacy interest after death" did apply, although he decided that the privacy interests of the deceased individuals were "moderately reduced" in those circumstances.
>
> Based on the previous orders of this office, and on the representations of the parties, it is my view that the unlisted factor of a "diminished privacy interest after death" is a factor that applies upon the death of the individual to whom the information relates. However, I find that it is not to be attributed any significant weight for the first year following death, but that after that time, it should be accorded moderate weight.

I agree with Adjudicator DeVries' approach and adopt it for the purposes of the current appeal.

In keeping with prior orders of this office, I find that "diminished privacy interest after death" is a relevant circumstance favouring the disclosure of the deceased's personal information. However, because the deceased has not been dead for 30 years, the information about her and others contained in the records falls within the scope of section 2(2). Accordingly, given the wording of that section, I accept the Ministry's submission that "diminished privacy interest" should be applied with careful consideration to the particular facts and circumstances of each case.

In the circumstances of this appeal, given that the deceased passed away in 2006, more than three years have passed since the date of her death. As more than one year has passed since the date of death, in my view, in keeping with prior orders identified above, this circumstance should be attributed moderate weight for the majority of the deceased's personal information. Specifically, this information includes the deceased's occupation, marital status, address and age as it appears on the statement of marriage and the deceased's date of birth, age at time of death, place and location of death, physician, marital status, occupation, usual or last known residence and burial information as it appears on the statement of death.

With respect to the deceased's social insurance number, however, I find that the circumstance should not apply. This is in keeping with Adjudicator Jennifer James' finding in Order PO-2807 where she found that "diminished privacy interest after death" carried no weight with respect to a deceased's social insurance number. In Order PO-2807, in arriving at that finding, Adjudicator James considered Order PO-2636-I where this office found that an individual's social insurance number is highly sensitive and could lead to the identification of confidential employment and financial personal information and Orders PO-1717, PO-2298 and PO-2802-I where disclosure

of a deceased individual's social insurance number was found to constitute an unjustified invasion of personal privacy.

As for the personal information relating to other individuals contained in the records, there is no evidence that the spouse and witnesses identified on the statement of marriage and the informant identified on the statement of death are deceased. In fact, it is not unreasonable to assume that these individuals are still alive. In keeping with Order P-1232, in the absence of any evidence suggesting that they are dead, I find that the circumstance, "diminished privacy interest after death," does not apply to their personal information. Specifically, this information includes the age, marital status, occupation, and address of the groom, and the witnesses' names, signatures and addresses in the statement of marriage, and the deceased's spouse's name as well as the information about the informant listed in the statement of death.

Benefit to unknown heirs

Threshold issue – application of PIPEDA

The Ministry submits that given that private heir tracers, like the appellant, are unregulated, before the circumstance referred to in previous orders as "benefit to unknown heirs" can be considered it must be established that the appellant's collection and use of the personal information at issue in the appeal is in accordance with *PIPEDA*. The Ministry submits that the appellant's ability to use and collect personal information under *PIPEDA* is a relevant consideration when determining whether there is a benefit to unknown heirs because there can be no benefit if the appellant cannot collect and use the information it seeks. The Ministry explains:

> [S]ubsection 7(1) of *PIPEDA* provides limitations on the collection of personal information. The Ministry has reviewed this section, and respectfully submits that it is uncertain of the authority the appellant is relying on to collect personal information relating to the deceased individual and the other individuals identified in the records. Furthermore, it is unclear that the individuals identified in these records will be informed of the collection and given the ability to consent to the collection and use.
>
> Moreover, the Ministry submits that there can be no benefit to unknown heirs from the disclosure of the personal information if the commercial heir tracers are not authorized to use the personal information. Subsection 7(2) of *PIPEDA* provides that personal information may only be used without the knowledge or consent of the individual, in limited circumstances. It is respectfully submitted that it is not clear if the use of personal information by the appellant fits into one of the permitted circumstances outlined in subsection 7(2) of *PIPEDA*. The Ministry submits that the onus lies with the appellant to demonstrate to the Ministry how it is authorized to collect, use and disclose the personal information for the commercial purpose of locating unknown heirs and charging those heirs a finder's fee. If the Ministry and the appellant disagree as to the appellant's authority to collect, use and disclose personal information for this commercial

> purpose under *PIPEDA*, the matter can be referred to the Federal Privacy Commissioner for determination pursuant to section 11 of *PIPEDA*.
>
> In sum, the Ministry respectfully submits that the factor "benefit to unknown heirs" cannot be considered until such time as the lawful authority of the appellant to make commercial use of the information sought is established.
>
> In the circumstances of this appeal, where the estate has only been active for two years, and any benefit to unknown heirs depends on the commercial use of personal information that may be restricted by privacy legislation, it is submitted that the unlisted factor of benefit to unknown heirs be accorded no significant weight. Further more, given that the Ministry has already disclosed some personal information from the records to the appellant, which may assist the location of unknown heirs, it is submitted that further disclosure of the remaining personal information is not justified to the extent that it trumps the privacy protection objective of this exemption.

The appellant takes the position that *PIPEDA* does not apply for two reasons. First, the appellant submits that *PIPEDA* does not apply to the Ministry, "as it is not engaged in a commercial activity" as required by section 4(1)(a) of that act. Additionally, the appellant submits that based on a comparison of the definitions of "personal information" and "personal health information" the collection, use and disclosure of personal information of a deceased individual is not governed by *PIPEDA* unless the information qualifies as personal health information. The appellant submits:

> Section 1 of *PIPEDA* includes the following definitions:
>
> > "*personal information"* means information about an identifiable individual, but does not include the name, title or business address or telephone number of an employee of an organization.
> >
> > *"personal health information"*, with respect to an individual, ***whether living or deceased,*** means … [emphasis added].
>
> [The appellant] submits that if the legislature intended information related to deceased individuals to be governed by *PIPEDA*, it would have included the phrase "whether living or deceased" in the definition of "personal information" as it did in the definition of "personal health information."

In the alternative, the appellant submits that if the collection of personal information of deceased individuals is governed by *PIPEDA*, the collection of the information at issue in this appeal is exempt from the need for consent pursuant to section 7(1) of that act. The appellant submits:

> Section 7 of *PIPEDA* lists certain exceptions to the general rule that personal information may be collected, used or disclosed by an organization in the course

of commercial activities only with the individual's knowledge and consent. Section 7(1) states:

> [A]n organization may collect personal information without the knowledge or consent of the individual only if
>
> (a) the collection is clearly in the interests of the individual and consent cannot be obtained in a timely way.

The individuals with respect to whom the information at issue relates are deceased. They obviously cannot consent, except through their personal representative or Estate Trustee, which is the OPGT. The OPGT has a statutory and trust obligation to act in the interest of the deceased individuals it represents. It is in the interest of the deceased (and of course in the interest of the deceased's heirs at law) to locate the heirs of the deceased's estate and enable the heirs to prove their entitlements.

The appellant further submits that if the exception at section 7(1)(a) does not apply, the appellant is permitted to collect the information with the consent of the person authorized to give consent, the OPGT. The appellant submits that providing such consent in the circumstances of this case furthers the legislative mandate of the OPGT and its duties as personal representative and/or estate trustee of the estate of the deceased individual.

The appellant explains that the purpose of the relevant part of *PIPEDA* set out in section 3 should be considered. That section states:

> The purpose of this Part is to establish, in an era in which technology increasingly facilitates the circulation and exchange of information, rules to govern the collection, use and disclosure of personal information in a manner that recognizes the right of privacy of individuals with respect to their personal information **and the need of organizations to collect, use or disclose personal information for purposes that a reasonable person would consider appropriate in the circumstances** [emphasis added by appellant].

In its reply representations, the Ministry restates that the threshold question relating to the application of *PIPEDA* must be determined before considering the relevance of any "benefit to unknown heirs" in the circumstances of this case.

The Ministry submits that the appropriate forum to determine the question of the application of *PIPEDA* to the appellant is the federal privacy commissioner and that the IPC should direct the parties to the federal commissioner before making a final determination on the issues in the appeal:

> The IPC has held that where the application of *PIPEDA* is at issue, this question is properly addressed by the Office of the Privacy Commissioner of Canada. In

> Reconsideration Order PO-2590-R, the IPC concluded that it was neither necessary nor desirable for the Ontario IPC to adjudicate an issue under *PIPEDA*, "a function, which the Parliament of Canada, has expressly assigned to the Privacy Commissioner of Canada." Previously where the application of *PIPEDA* had been raised on appeal, it had been in the context of a potential conflict between *PIPEDA* and [the *Act*]. In the present case, the Ministry submits that there is no issue of conflict. Rather, the issue in this appeal is the application and compliance with *PIPEDA*. This is a question of law that ought to be addressed in the federal forum.
>
> Accordingly, in the circumstances, it would be appropriate for the IPC to direct the parties to the Privacy Commissioner of Canada for a determination of the threshold question, and then require the parties to return the matter to the IPC for a final determination on the issues in the appeal.

Responding to the appellant's representations, the Ministry submits:

- The definition of "personal information" includes the personal information of deceased individuals as deceased individuals are still identifiable individuals. Also, *PIPEDA* does not expressly exclude deceased individuals from its definition of "personal information." Also section 7(3)(h)(ii) of *PIPEDA* refers to disclosure twenty years after the death of the individual whom the information is about.

- Section 7(1)(a) of *PIPEDA* cannot operate to authorize the appellant to collect the personal information without consent as consent can, in fact, be obtained in a timely way. The appellant can obtain consent from the authorized representative of the deceased individual, which is the OPGT as estate trustee.

- Section 7(1)(a) can only apply if collection is clearly in the interests of the individuals. Given the large fees charged by the appellant and the uncertainty over the potential heirs' opportunity to make an informed choice in dealing with the appellant, the Ministry submits that the collection of personal information by the appellant would not clearly be in the interests of the individuals.

- OPGT should be added as an affected party to make submissions on whether it is obligated to consent to the disclosure of the personal information at issue in the appeal.

Analysis and finding with respect to the threshold question of the application of PIPEDA

For a number of reasons, I disagree with the Ministry's position that the appellant's ability to collect and use the information at issue in accordance with *PIPEDA* is a threshold question that must be established before determining whether the circumstance "benefit to unknown heirs" is a relevant consideration in this appeal.

Under the *Act*, the public has a right to request access to recorded information held by provincial government institutions subject to limited and specific exemptions. *PIPEDA* is a separate scheme

that governs the collection, use and disclosure of personal information by commercial businesses. As *PIPEDA* does not apply to government institutions, the disclosure of information held by the Ministry is entirely governed by the *Act*. In the current appeal, the issue before me is whether, pursuant to the *Act*, the Ministry is required to disclose the requested information or whether any of the discretionary or mandatory exemptions apply. The *Act* does not require that a requester explain the purpose of the access request or what use would be made of the requested information if access is granted.

As acknowledged by the Ministry, it has been previously established that there is no conflict between *PIPEDA* and the *Act* and therefore, that the doctrine of paramountcy does not apply. In Order PO-2590-R, Adjudicator DeVries found that the existence of *PIPEDA* was not a relevant circumstance favouring non-disclosure, in and of itself. In the current appeal, the Ministry submits that it is making a different argument: that "benefit to unknown heirs" cannot be considered before it can be determined whether the appellant can collect, use and disclose the information in accordance with *PIPEDA*. As a result, the Ministry submits that this office must refer the matter to the Privacy Commissioner of Canada for a determination on the application of *PIPEDA* before it can make a final determination on the issues in this appeal. The Ministry specifically states in its representations that it is not alleging that there is a conflict between *PIPEDA* and the *Act;* it argues that the application and compliance with *PIPEDA* is a question of law that must be determined in the federal forum before this appeal can be decided under the *Act*.

In my view, despite the Ministry's express statement that the doctrine of paramountcy does not apply, its position amounts to a paramountcy argument. If the application of federal legislation must be determined prior to the application of provincial legislation, no matter how it is characterized, this is essentially an argument that the federal legislation is paramount and excludes the application of the *Act*.

In Canadian constitutional law, the doctrine of paramountcy dictates that where there is a conflict between valid provincial and federal laws, the federal law will prevail and the provincial law will be inoperative to the extent that it conflicts with the federal law. The fundamental test for establishing paramountcy was articulated by the Supreme Court of Canada in *Multiple Access v. McCutcheon* [1982] 2 S.C.R. 161 and was recently followed in *Canadian Western Bank v. Alberta* [2007] 2 S.C.R. 3. In *Multiple Access* it was established that paramountcy can only be invoked when the compliance with one law means the breach of another. In my view, if the doctrine of paramountcy does not apply and there is no conflict between the two acts, it cannot be said that one matter must be established before the other as both statutes operate concurrently.

In Order PO-2590-R, Adjudicator DeVries considered the issue of whether *PIPEDA* impacts requests made by commercial heir tracers. In that reconsideration order, the OPGT took the position that *PIPEDA* applied in the circumstances of that appeal, and that the doctrine of paramountcy applied to prohibit this office from ordering disclosure of any personal information. As the Ministry was questioning the validity or applicability of certain sections of the *Act*, pursuant to section 109 of the *Courts of Justice Act*, Adjudicator DeVries sent a Notice of Constitutional Question to the parties and to the Attorneys General of Canada and Ontario inviting them to provide written representations on the identified Constitutional Question. Representations were received from the Attorney General of Ontario (the Attorney General) who

took the position that the doctrine of paramountcy did not apply in the circumstances. In Order PO-2590-R, Adjudicator DeVries quoted from the representations submitted by the Attorney General:

> After reviewing the doctrine of paramountcy, the Attorney General states that the first question to be determined in these circumstances is whether there is an overlap between the federal and provincial provisions of the respective laws. The Attorney General of Ontario then states:
>
> > There is no overlap between the federal (*PIPEDA*) and provincial [the *Act*] statutes in these cases. In order for there to be overlap, a precondition to the applicability of the doctrine of paramountcy, both statutes must impose obligations on one entity. In this case, *PIPEDA*'s restrictions on the collection, use and disclosure of personal information do not bind [the PGT]. The requester is bound by *PIPEDA*, but [the *Act*] imposes no obligation on the requester. As a result, there is no possibility that there is any constitutional conflict between the statutes or that the operation of [the *Act*] would frustrate the purposes of *PIPEDA*.
> >
> > [The *Act*], which governs access to information held by the government, imposes obligations on the Ontario government, including [the PGT]. *PIPEDA* does not impose obligations on the Ontario government, including [the PGT]. There is therefore, no overlap between the duties imposed in the federal and provincial statutes from the perspective of [the PGT]. Without this overlap, no issue of constitutional conflict can arise.
> >
> > Similarly, there is no overlap from the perspective of a requester. *PIPEDA* applies to "every organization in respect of personal information that … the organization collects, uses or discloses in the course of commercial activities:" *PIPEDA*, s. 4(1)(a). Thus, *PIPEDA* will apply to any requester that meets the definition of an "organization" which "collects, uses or discloses" personal information "in the course of business activities." The only requirement imposed on the requester under [the *Act*] is to comply with the access procedure contained in s. 24 of [the *Act*]. Although the requester may be bound by *PIPEDA*, its obligations under *PIPEDA* do not pose any constitutional conflict.

Prior to the issuance of Order PO-2590-R, the OPGT revised its representations, withdrew its position regarding the paramountcy of *PIPEDA*, and deferred to the Attorney General on the issue. Nevertheless, in my view, the Attorney General's position on the lack of overlap between the federal and provincial laws is relevant. I agree with the position taken by the Attorney General in the submissions that I have just quoted and find that the doctrine of paramountcy has no application in the current appeal.

I now turn to the specific argument made by the Ministry, to the effect that the relevance of "benefit to unknown heirs" cannot be considered before it can be determined whether the appellant can collect, use and disclose the information in accordance with *PIPEDA* and that this office must refer the matter to the Privacy Commissioner of Canada before it can make a final determination on the issues in this appeal. For the reasons that follow, I disagree.

In Order PO-2590-R Adjudicator DeVries also addressed the issue of whether the existence of *PIPEDA* should be considered, in and of itself, a relevant consideration under section 21(2). In that order he stated:

> Although the enactment of *PIPEDA* and its possible application to the appellant may have significant impact on the appellant and the manner in which the appellant conducts its business when dealing with the personal information of identifiable individuals, the existence of *PIPEDA* is not a relevant unlisted factor or circumstance for me to consider in the context of this appeal.
>
> The PGT submits that this office is required to conduct a review of the possible application of *PIPEDA*, including its application and the possible existence of any exceptions to its application, in circumstances where the requester is a corporate entity. Conversely, the PGT argues that, at a minimum the application of *PIPEDA* is to be reviewed by this office where "the [appellant's] ability to collect the personal information is challenged on the grounds of *PIPEDA*." Once this occurs, the PGT argues that the onus to show that *PIPEDA* does not apply, or that various exceptions apply to the appellant, shifts to the appellant. I do not accept this argument.
>
> In the first place, the provisions of *PIPEDA* provide a comprehensive procedure to determine the application of that legislation in particular instances, and also provides remedies for breaches of the legislation. The Attorney General of Ontario, in its representations on the preliminary issues set out above, confirms that there is no constitutional conflict or overlap between *PIPEDA* and the *Act* in cases where requests for information are made by corporate entities. The legislative schemes are separate, and apply to separate bodies. In addition, the oversight bodies are different, and different remedies apply in circumstances where breaches of the legislative provisions occur. For the reasons that follow I have concluded that it is neither necessary nor desirable for this office to adjudicate an issue under *PIPEDA*, a function which the Parliament of Canada has expressly assigned to the Privacy Commissioner of Canada.
>
> Under section 10(1), the *Act* provides a public right of access to information held by institutions unless an exemption applies or the request is frivolous or vexatious. Previous orders have confirmed that the functioning of the *Act* is distinct from other processes, including legislated processes for civil discovery and criminal disclosure of information, as well as court processes. In a recent order I confirmed that various processes respecting the public's right to obtain

access to information are distinct, including the application of a publication ban in certain circumstances, and stated in Order MO-2178:

> The functioning of the *Act* is distinct from the processes of the courts, even where access is requested to information that falls under a publication ban. This is confirmed in *Doe v. Metropolitan Toronto (Municipality) Commissioners of Police* (June 3, 1997), Toronto Doc. 21670/87Q (Ont. Gen. Div.), in which Mr. Justice Lane stated the following with respect to the relationship between the civil discovery process and the access to information process under the *Act*, in the context of a motion to clarify an earlier order he had made granting a publication ban:
>
> The order which I made on October 18, 1996 herein was not intended to interfere in any way with the operation of the *Municipal Freedom of Information and Protection of Privacy Act* legislation, nor ban the publication of the contents of police files required to be produced under that Act.

Mr. Justice Lane also stated as follows regarding the interaction between the *Act* and other legislation concerning confidentiality issues (in that case, the Ontario Rules of Civil Procedure):

> … In my view, there is no inherent conflict between the *Act* and the provisions of the Rules [of Civil Procedure] as to maintaining confidentiality of disclosures made during discovery. The *Act* contains certain exemptions relating to litigation. It may be that much information given on discovery (and confidential in that process) would nevertheless be available to anyone applying under the *Act*; if so, then so be it; the Rules of Civil Procedure do not purport to bar publication or use of information obtained otherwise than on discovery, even though the two classes of information may overlap, or even be precisely the same.

In the same way, in the event that an order of this office were to find that certain requested information is not exempt and ought to be disclosed, and as a consequence an individual chooses to publish that information, there is no remedy under the *Act*. Rather, the remedy is found within the context of the criminal law and, in particular, in the mechanisms it provides for dealing with breaches of a publication ban.

In the same way, the possible application of *PIPEDA*, including whether the appellant is covered by it and, if so, what restrictions or exceptions apply, is a matter for the Privacy Commissioner of Canada to determine. The fact that section 21(2) allows this office to review all relevant factors does not require this office to review the possible application of all legislative requirements which may

> or may not apply to appellants. If an appellant infringes *PIPEDA* by collecting the information he has requested from the PGT, this would properly be addressed in the complaints process established under that statute. In the circumstances, I do not consider the existence of *PIPEDA* to be a relevant unlisted factor to consider in the circumstances of this appeal.
>
> In the alternative, if the existence and possible application of *PIPEDA* were to be a relevant factor to consider in the circumstances of this appeal, based on the PGT's own alternative arguments, I would find that the existence of *PIPEDA* would be a factor favouring disclosure of the requested information to the appellant. As identified under Ground 5, below, if *PIPEDA* were found to apply to the appellant, the appellant would be limited in the manner in which he could deal with the personal information obtained under the *Act*. This, in my view, may be a relevant factor favouring disclosure of the information in the circumstances of this appeal.
>
> In conclusion, I reject the PGT's argument that *PIPEDA* should be considered as a relevant circumstance under section 21(2) of the *Act*, such that the disclosure of the record would amount to an unjustified invasion of privacy.

I agree with the approach taken by Adjudicator DeVries in Order PO-2590-R. I find that even though the Ministry has characterized its argument differently (arguing that the application of *PIPEDA* is a threshold question to be established prior to a determination of the relevance of the circumstance "benefit to unknown heirs" rather than *PIPEDA* being a relevant circumstance under section 21(2), in and of itself), Adjudicator DeVries' reasoning is equally applicable to the Ministry's current argument.

As explained by Adjudicator DeVries, *PIPEDA* and the *Act* are separate legislative schemes that apply to different bodies. The *Act* provides a public right of access to information held by provincial government institutions unless a legislated exemption or exclusion applies. The processes under the *Act* have been found to be distinct from other processes, including the application of *PIPEDA*. The provisions of *PIPEDA* provide a comprehensive procedure to determine the application of that legislation in particular instances and also provides remedies for breaches of that legislation. As stated by Adjudicator DeVries in Order PO-2590-R:

> [T]he possible application of *PIPEDA*, including whether the appellant is covered by it and, if so, what restrictions or exceptions apply, is a matter for the Privacy Commissioner of Canada to determine. The fact that section 21(2) allows this office to review all relevant factors does not require this office to review the possible application of all legislative requirements which may or may not apply to appellants. If an appellant infringes *PIPEDA* by collecting the information he has requested from the PGT, this would properly be addressed in the complaints process established under that statute. In the circumstances, I do not consider the existence of *PIPEDA* to be a relevant unlisted factor to consider in the circumstances of this appeal.

For the same reasons, I do not agree that the application of *PIPEDA* to the appellant is a threshold question that must be established prior to a determination of the relevance of "benefit to unknown heirs." The *Act* and *PIPEDA* are distinct pieces of legislation that operate concurrently, independently from one another. Accordingly, I reject the Ministry's argument that the matter must be referred to the Privacy Commissioner of Canada before the issues on appeal can be determined.

Although I have found that it is not necessary for the determination of this appeal that this office refer the matter to the Privacy Commissioner of Canada, I am not suggesting that I have made a determination as to whether or not the appellant is entitled to collect, use or disclose the personal information at issue in accordance with *PIPEDA*. Such finding would be in excess of my jurisdiction and is a matter to be determined through the separate process established by that statute. The Ministry's argument suggests that it is the obligation of this office to refer the matter to the Privacy Commissioner of Canada. I disagree. The Ministry acknowledges that, as estate trustee, the OPGT is the authorized representative of the deceased individual and, therefore, under section 7(1)(a) is the body that is authorized to consent to the collection of the deceased's personal information. In my view, as the estate trustee, it is also the OPGT and not this office that has the authority to apply to the Privacy Commissioner of Canada to request a review of the collection of the deceased's personal information by the appellant to determine whether it is in accordance with *PIPEDA*. To the best of my knowledge, the OPGT has not done so.

As an aside, I note that in the Ministry's reply representations it submits that the OPGT should have been added as an affected party to make submissions on whether it is obligated to consent to the disclosure of the personal information at issue. In the circumstances of this appeal, the request was processed by the Ministry and not the OPGT. If the Ministry required the input or assistance of the OPGT in the preparation of its representations, it would have been entitled to obtain that assistance and incorporate the concerns or positions expressed by that office at the adjudication stage of the appeal. In fact, in portions of the Ministry's representations, it does reference positions taken by the OPGT suggesting that it did indeed consult on this appeal. Accordingly, if the Ministry felt that the input of the OPGT, as estate trustee, was required to address the issue of consent to the disclosure of the personal information at issue it was not precluded from seeking submissions from or consulting with the OPGT. It is well established that, for the purpose of making representations in the course of an appeal under the *Act* the Government of Ontario is indivisible and "speaks with one voice." Accordingly, where a ministry has assumed the responsibility of processing an access request, it is that ministry which should speak for and represent the interest of the provincial government as a whole. This approach has been applied in many previous decisions of this office [See Orders P-270, P-395, P-902, P-965, P-902 and PO-1846-F, PO-2126].

Benefit to unknown heirs – representations of the parties

As I have found that the application of *PIPEDA* to the appellant is not a threshold question that must be determined prior to establishing whether "benefit to unknown heirs" is relevant to this appeal, I will now consider whether "benefit to unknown heirs" is a relevant circumstance and, if so, what weight it should be afforded.

Previous orders issued by this office have found that "benefit to unknown heirs" is a relevant consideration weighing in favour of disclosure of information. [See for example: Orders P-1493, PO-1717, PO-1736, PO-2012-R, PO-2240, PO-2260 and PO-2298]. However, these orders have established that the weight that should be attributed to this circumstance is fact-specific and highly dependent on the particular circumstances of each appeal [PO-2240].

In Order PO-1717, former Assistant Commissioner Mitchinson discussed the rationale for considering "benefit to unknown heirs" as a relevant circumstance favouring disclosure under section 21(2):

> The appellant … submits that disclosure of the requested information pertaining to the deceased's estate will help unknown heirs recover funds that they would otherwise be unlikely to receive. I considered this [circumstance] in Order P-1493, involving a request by an heir tracer to the Ministry of Consumer and Commercial relations for access to marriage and death records. In Order P-1493, I stated:
>
> > In the appellant's view, disclosure of the records would serve to benefit individuals who would otherwise never know and never be able to prove their entitlement under an estate. Although not directly related to any of the section 21(2) considerations, I find that this is [a circumstance] favouring disclosure.
>
> Similarly, I find that this [circumstance] is a relevant consideration in the present appeal.

This approach was followed in subsequent orders, including Orders PO-1736, PO-1923, PO-2240 and PO-2260. In the current appeal I accept the possibility that disclosure of personal information contained in a statement of death and a statement of marriage could reasonably be expected to result in individuals successfully proving their entitlement to assets of a deceased's estate and that this amounts to a "benefit to unknown heirs." Accordingly, I find that "benefit to unknown heirs" is a relevant circumstance weighing in favour of disclosure.

With respect to the weight that should be attributed to this relevant circumstance, in the context of this appeal, the Ministry takes the position that it should be afforded low weight given that it is not clear that there will be a benefit to unknown heirs. The Ministry submits:

> Commercial heir tracers remain unregulated, and accordingly the fees and contractual arrangement through which they provide their services are unknown. The PGT on the other hand is a public institution, whose fees are regulated by statute. The Ministry therefore submits that before any benefit to unknown heirs may properly be considered, it should have some idea as to the fees that will be charged by the heir tracer. If the fees are substantially higher than those charged by the PGT, then it would clearly be in the best interests of the heirs to be located by the PGT. Accordingly, the Ministry, without further information as to potential fees to be charged by the heir tracer, must, in the present circumstances

> where the estate file is less than two years old, give low weight to the unlisted factor of benefit to unknown heirs.

The Ministry submits that in the circumstances of this appeal, since the estate has only been active for two years (at the time their representations were submitted), disclosure of the information would deprive the OPGT of a reasonable chance of finding heirs and those heirs would not be able to reap the benefits of their inheritance subject only to the limited statutory fees charged by the OPGT.

The Ministry submits that it consulted with the OPGT, the estate trustee for the estate of the deceased individual, and the OPGT has not yet located the heirs of the deceased's estate and the estate remains active. The Ministry submits:

> Given the short length of time that the estate at issue in this appeal has been under the PGT's administration, it is the PGT's view that there is no benefit to unknown heirs in disclosing further personal information regarding the deceased person at this time. Moreover, pursuant to section 66(a) of the *Act*, the PGT has indicated that it respectfully declines to consent to the release of the information relating to the deceased individual.

The Ministry agrees with the OPGT and submits that because the estate has only been active for two years (at the time their representations were submitted) and the OPGT is still actively seeking unknown heirs, the "benefit to unknown heirs" circumstance should not be given great weight. The Ministry submits:

> In [Order] PO-2260, the IPC found that the weight attributed to the unlisted factor of benefit to unknown heirs is significantly reduced within the first year following the date of death.
>
> While the unlisted factor of benefit to unknown heirs was found to be relevant upon the date of death, the IPC found that "the likelihood that the disclosure of information will result in individuals proving their entitlement to assets of estates which they may not have been able to otherwise increases as the time since the date of death elapses." Given that access to the personal information is being sought by an unregulated commercial entity for a commercial purpose, the Ministry submits that the unlisted factor of benefit to unknown heirs should be given no significant weight [Order PO-2260].
>
> In Orders PO-2198 and PO-1923, the IPC found that the factor of benefit to unknown heirs applies to a high degree to the date of death. The Ministry has applied these orders in making its access decision, and provided the appellant with the date of death. The Ministry has also provided the appellant with the marital status, the region of the place of death, and the sex of the deceased, which have been attributed a moderate to high degree of weight with respect to the factor of benefit to unknown heirs in previous decision of the IPC.

> The IPC has determined that the factor of benefit to unknown heirs does not apply to the social insurance number, and the informant's personal information. The Ministry therefore submits that this information must be withheld, as disclosure would constitute an unjustified invasion of the personal privacy of the deceased individual and the informant. The Ministry also submits that this factor does not apply to the deceased individual's burial arrangements, as this personal information would not assist in the location of unknown heirs [Order PO-1923].
>
> The remaining information on the statement of death consists of the date of birth, last name of spouse, usual residence, and parents' names. While the IPC has given the factor of benefit to unknown heirs moderate to high weight in previous decisions, the Ministry submits that given the short length of time that the estate has been active, the restrictions on the commercial use of this information, and the risk of identity theft from the release of this particular information, the factor should be accorded no significant weight in respect to these fields of personal information.

The appellant submits that although the estate has only been active for two years (at the time their representations were submitted), there is still a benefit to unknown heirs because, as outlined in an affidavit of its in-house counsel, on numerous occasions the appellant has located a rightful heir prior to the OPGT where the date of death is less than two years. Accordingly, the appellant submits that disclosure of the personal information at issue increases the possibility of locating rightful heirs who might otherwise remain unknown.

With respect to the Ministry's concern regarding the fees associated with commercial heir tracers such as the appellant, the appellant submits that their services are offered to potential heirs who are under no obligation to retain the appellant and are free to make informed decisions as to how they wish to proceed. The appellant continues that a reasonable person who died intestate would want his or her heirs to be determined and receive their inheritance as quickly and as efficiently as possible. The appellant also submits that a reasonable person would want his or her heirs to be able to choose whether to use the services of a commercial service provider or a government agency to receive such inheritance. Accordingly, the appellant submits that although there is no express obligation on the OPGT to consent to the disclosure it should be implied because it has a statutory and trust obligation to act in the best interest of the deceased and his or her heirs.

In sum, the appellant takes the position that "benefit to unknown heirs" is a relevant circumstance that weighs in favour of disclosure of the requested information.

In its reply representations, the Ministry submits that the facts of the current appeal can be distinguished from those in Orders PO-1717, PO-1736, and PO-1923. The Ministry submits that in the present case there is now evidence of the quantum of fees charged by the appellant which the Ministry submits are "disproportionate to the services provided and accordingly, [are] unfair and unreasonable."

The Ministry submits that the costs charged by the OPGT are substantially less as they are regulated by legislation and they can be "challenged in a passing of accounts proceeding before the court." The Ministry submits:

> [A]bsent compelling evidence to justifying the quantum of the fee charged by the appellant, the IPC must conclude that the potential reduction on an heir's entitlement to the estate outweighs the benefit to the heir in circumstances where that heir is located by an heir tracer in advance of the OPGT.
>
> In addition, the Ministry submits that the quantum of fees charged by the appellant is itself an unlisted factor that must be weighed in determining whether the disclosure of information is of benefit to the heir. In the present case, the Ministry submits that the fees are disproportionate to the services provided and unreasonable. These factors weigh in favour of non-disclosure of the information.

Responding to the appellant's position that it offers an alternative service that in itself is beneficial to heirs, the Ministry submits that the appellant has provided no evidence to demonstrate how the appellant is offered a choice if the heir is left with the impression that the only recourse is to retain the services of the appellant.

Analysis and finding – Benefit to unknown heirs

Both parties agree that, in keeping with previous orders issued by this office, "benefit to unknown heirs" is a relevant consideration weighing in favour of the disclosure of information that would help unknown heirs recover funds that they would otherwise be unlikely to receive. However, based on the facts and circumstances of the current appeal, as well as the information that remains at issue, the Ministry takes the position that it should be attributed low weight because it is not clear that there will, in fact, be a benefit to unknown heirs for three reasons.

First, the Ministry argues that the heir tracing business is an unregulated commercial business and the fees charged by the appellant are not only higher than those charged by the OPGT but are also "unreasonably high" and therefore, that low weight should be given to this consideration. Previously in this order I dismissed an argument that the fees charged by the appellant would expose potential heirs to pecuniary or other harm or that any such exposure would be unfair because they are free to either reach an agreement with a commercial heir tracer, or not. In my view, similar reasoning applies to this argument. I find that there is a "benefit to unknown heirs" in the mere knowledge that there exists an estate to which they may be entitled and it is their decision as to whether they will engage the services of a commercial heir tracer or contact the OPGT. As for the Ministry's argument that there is no evidence that the potential heir is made aware that it has a choice between the services of the appellant or the OPGT, I do not have sufficient materials before me on which to reach a conclusion that this is a real or significant risk. In any event, potential heirs who contract with commercial tracers based on, for example, duress or misrepresentations, may seek remedies in the courts based on contract law. Accordingly, I do not accept the Ministry's argument that the fees charged by the appellant negate the potential "benefit to unknown heirs" to the extent that it should be attributed no significant weight.

Second, the Ministry submits that the estate has been active for only a short time and therefore there is no benefit to unknown heirs as the OPGT is still actively seeking the unknown heirs. In Order PO-2260, Adjudicator DeVries found that the possibility of locating unknown heirs increases depending upon the length of time that the unknown heirs are sought. As a result, he found that moderate weight should be afforded to the consideration "benefit to unknown heirs" following the first year of death. In the circumstances of this appeal, more than one year has passed from the date of death. Accordingly, in keeping with previous orders, I accept the Ministry's argument that the length of time that the estate has been active is relevant to the determination of the weight that should be attributed to "benefit to unknown heirs" but that given the first year has passed, I disagree with the Ministry's contention that this consideration should be attributed no significant weight.

Finally, the Ministry argues that due to the restrictions on the commercial use of this information and the risk of identity theft the circumstance, "benefit to unknown heirs," should be accorded no significant weight. Again, I disagree. I have already addressed the "risk of identity theft" above, and I find that I do not have sufficient evidence before me to establish that restrictions on the commercial use of this information would apply. Accordingly, I do not agree that these two considerations negate the potential "benefit to unknown heirs" to the extent that the circumstance should be attributed no significant weight in this appeal.

The general approach of this office with respect to the application of "benefit to unknown heirs" was set out by Senior Adjudicator Goods in Order PO-1736:

> I agree with the approach taken by the Assistant Commissioner in [Order PO-1717], and similarly find that the potential for disclosure of the information at issue *to lead to individuals proving their entitlement to assets of estates which they may not have been able to otherwise* is a significant factor favouring disclosure. (emphasis added)

Subsequent orders have adopted this approach to assist in the determination of the weight to be attributed to "benefit to unknown heirs" by establishing that the weight varies according to the extent to which a particular item of personal information assists in the identification of potential heirs. For example, in Order PO-2298, Adjudicator DeVries stated:

> In the circumstances of this appeal, the date of death, place of death, age, date of birth, place of birth, marital status, occupation and place of occupation of the deceased, addresses, and name of the deceased's father could reasonably be expected to assist in the identification of potential heirs. Applying similar reasoning to that followed by Senior Adjudicator Goodis in Order PO-1736 and Assistant Commissioner Mitchinson in Order PO-1923 and PO-1936, I find that this unlisted factor applies to a high degree as it relates to the date of death; to a moderate to high degree to the place of death, date of birth, place of birth, age, marital status, address, and occupation information of the deceased, and to the name of the deceased's father; and not at all to the deceased's social insurance number, health number or other identifying numbers of the deceased.

I agree with the approach taken by Adjudicator DeVries in Order PO-2298 and adopt it for the purposes of the current appeal.

Considering particular information that remains at issue in the statement of marriage and the statement of death, I accept that the disclosure of some of the information, including the personal information of the deceased and the personal information of other individuals who may have a family connection with the deceased could reasonably be expected to assist the appellant in locating individuals who are entitled to the assets of the deceased estate. As I have already found that the information related to the deceased's parents and the groom's parents does not qualify as personal information and should be disclosed, the only personal information about individuals who may have a family connection to the deceased is that which relates to the deceased's spouse.

Accordingly, I find that the consideration "benefit to unknown heirs" carries significant weight for the remaining information on the statement of marriage related to the deceased and the groom because the disclosure of this information could reasonably be expected to help locate potential heirs.

With respect to the rest of the information, the occupations, ages, marital status and addresses of the deceased and the groom at the time of their marriage, and the witnesses' signatures and addresses, carry moderate to low weight. In my view, the circumstance "benefit to unknown heirs" should be attributed lesser weight to this information because it is over fifty years old and less likely to assist the appellant in locating the deceased's next of kin.

In the statement of death, I find that the deceased's date of birth, age at time of death, place of death, address, name of physician who pronounced the death, occupation and type of business, burial information, the names of her parents, the last name of her spouse, and the personal information of the informant carry moderate to high weight because, in my view, this information could reasonably be expected to assist in the identification of potential heirs. I find however, that the circumstance "benefit to unknown heirs" does not apply to the deceased's social insurance number because no evidence has been provided to support a conclusion that this information could reasonably be expected to assist in the identification of potential heirs and I do not believe that it would.

Summary of findings and balancing of the section 21(2) factors

I have found that the listed factors at sections 21(2)(a) and (c) favouring disclosure, and section 21(2)(e) favouring non-disclosure, do not apply in the circumstances of this appeal. However, I have found that the factor in favour of non-disclosure at section 21(2)(h) is a relevant factor to be considered with respect to the information on the statement of death relating to the informant, but that it should carry little weight.

With respect to the other circumstances raised by the parties, I have found that all of them are relevant in the circumstances of the current appeal. Having considered the representations of the parties and previous decisions issued by this office, I have attributed the following weight to the four "relevant circumstances" that have been identified in this appeal:

- *Reasonable expectation of confidentiality* – favours non-disclosure – low weight for all of the personal information at issue.

- *Identity theft* – favours non-disclosure – does not apply to the spouse's name on the statement of death; low weight for the information on the statement of marriage related to the deceased, the groom, and the witnesses; moderate weight for the deceased's information on the statement of death except for the social insurance number which was attributed significant weight; significant weight for the informant's information on the statement of death.

- *Diminished privacy interest after death* – favours disclosure – does not apply to the age, marital status, occupation, and address of the groom and the witnesses' names, signatures and addresses in the statement of marriage; does not apply to the deceased's spouse's name and the information about the informant listed in the statement of death; does not apply to the deceased's social insurance number on the statement of death; moderate weight for the remainder of the deceased's personal information (occupation, marital status, address and age as it appears on the statement of marriage and date of birth, age at time of death, place and location of death, physician, marital status, occupation, usual or last known residence and burial information as it appears on the statement of death); significant weight for the name of the groom found on the statement of marriage.

- *Benefit to unknown heirs* – favours disclosure – does not apply to the deceased's social insurance number on the statement of death, low weight to the occupations, ages, marital status and addresses of the deceased and the groom at the time of marriage, as well as the witnesses addresses and signatures on the statement of marriage; moderate to high weight for the name of the parents groom found on the statement of marriage; significant weight to the deceased's date of birth, age at time of death, place of death, address, name of physician who pronounced the death, occupation and type of business, burial information, the last name of her spouse and the personal information of the informant on the statement of death.

Balancing the weight attributed to the factors listed above for the different types of personal information at issue, I find that disclosure of the following information would not constitute an unjustified invasion of the privacy of the individual to whom it relates:

- the deceased's personal information contained in the statement of marriage,
- the deceased's personal information contained in the statement of death,
- the groom's name and personal information contained in the statement of marriage,
- the names of the witnesses on the statement of marriage,
- the name of the physician who pronounced the death listed on the statement of death, and
- the name of the deceased's spouse listed on the statement of death.

Accordingly, I find that this information is not exempt from disclosure under section 21(1) and I will order that it be disclosed to the appellant.

However, based on the weight attributed to the relevant factors and circumstances, I find that disclosure of the deceased's social insurance number would constitute an unjustified invasion of personal privacy and therefore, qualifies for exemption under section 21(1) of the *Act*. Accordingly, the social insurance number of the deceased should not be disclosed to the appellant.

I also find that the disclosure of the informant's personal information would constitute an unjustified invasion of that individual's personal privacy. Although the circumstance "benefit to unknown heirs" weighs significantly in favour of the disclosure of this information, the factor at section 21(2)(h) and the unlisted factors, reasonable expectation of confidentiality and identity theft all weigh significantly in favour of non-disclosure of this information. Weighing these considerations, therefore, I find that the informant's personal information qualifies for exemption under section 21(1) of the *Act*.

I have also found that disclosure of information that reveals the ethnic origin of the deceased and the groom, specifically, birthplace, citizenship and racial origin, as well as information that would reveal their religious denomination, including the signature, church address and religious denomination listed on the statement of marriage, is presumed to constitute an unjustified invasion of personal privacy under section 21(3)(h). As section 21(4) does not apply to this information and the public interest override is not relevant in this appeal, I find that this information also qualifies for exemption under section 21(1) of the *Act* and should not be disclosed to the appellant.

ORDER:

1. I order the Ministry to disclose the portions of the records that are not exempt under the *Act* by **April 8, 2010**.

2. I uphold the Ministry's decision to withhold the remaining portions of the records. For the sake of clarity, I will provide the Ministry with a highlighted copy of the records identifying the portions that should **not** be disclosed to the appellant.

3. In order to verify compliance with the terms of this order, I reserve the right to require the Ministry to provide me with a copy of the information disclosed to the appellant pursuant to order provision 1.

Original signed by: March 19, 2010
Catherine Corban
Adjudicator