



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

ORDER PO-2874

Appeal PA09-90

Office of the Public Guardian and Trustee



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BACKGROUND:

Operating as part of the Ministry of the Attorney General, the Office of the Public Guardian and Trustee (PGT) has a diverse mandate that includes searching for heirs for estates it administers, monitoring charities, and protecting mentally incapable people. Under the *Substitute Decisions Act, 1992* (S.O. 1992, Ch. 30), the PGT is mandated to investigate allegations that a person is incapable of managing property or is incapable of personal care such that serious financial harm or serious adverse effects on health, hygiene or safety are resulting from the incapacity.

NATURE OF THE APPEAL:

An individual submitted a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to the PGT for information related to the PGT's investigation into an allegation that the requester's mother was incapable of handling her own personal care in 2003.

The PGT located a "Guardianship Investigation" file responsive to the request and issued a decision letter to the requester advising that many of the records "... have been destroyed as is required by section 27(10) of the *Substitute Decisions Act, 1992*, as amended."¹ The PGT denied access to the remaining records, consisting of administrative correspondence and forms, pursuant to sections 13(1) (advice or recommendations), 14(1)(d) (law enforcement/confidential source), 21(1) (personal privacy), 21(3)(a) (personal privacy/medical history), and 21(3)(f) (personal privacy/financial information) of the *Act*.

After appealing the PGT's decision to this office, the appellant advised that he accepted the PGT's explanation that all information collected during its investigation had been destroyed three years after the receipt of the allegation, because no application for temporary guardianship was made to the courts. A separate Court Application File was identified at this time as well, but the appellant confirmed that he did not wish to pursue access to it, but rather only to the general records from the file withheld by the PGT. The appellant expressed concern about references these records may contain about him relating to issues surrounding the guardianship investigation and other proceedings in which he and his family were involved at the time.

As some of the records appeared to contain the appellant's personal information, the PGT revised its position to account for the possible application of section 49(a), in conjunction with sections 13(1) and 14(1)(d), as well as section 49(b), along with the presumptions against disclosure in sections 21(3)(a) and (f), to deny access to the undisclosed portions of the records.

A mediated resolution of the appeal was not possible and it was transferred to adjudication, where it was assigned to me to conduct an inquiry. I sent a Notice of Inquiry outlining the facts and issues to the PGT, initially, seeking representations, which I received. At about the same time, the PGT issued a supplementary decision letter to the appellant granting full access to pages 4, 5 and 6, and partial access to pages 10 to 14. I sent the appellant a modified Notice of

¹ This reference appears to be erroneous. The provision of the *Substitute Decisions Act* applicable to personal care guardianship investigations is section 62, and the specific section that addresses the required destruction of records is section 62(12).

Inquiry and a copy of the PGT's representations in order to invite submissions from him. The appellant submitted brief representations in response.

RECORDS:

Given the PGT's revised decision, pages 4-6 have been removed from the scope of the appeal and only the severed portions of pages 10-14 remain at issue. The records at issue consist of phone call logs, administration management system (AMS) printouts, emails, correspondence (34 pages).

DISCUSSION:

PERSONAL INFORMATION

Section 47(1) gives individuals a general right of access to their own personal information held by an institution. Section 49 provides a number of exemptions from this right. The parts of section 49 that are relevant in this appeal state:

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

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

where the disclosure would constitute an unjustified invasion of another individual's personal privacy;

The PGT has withheld information in this appeal on the basis that its disclosure would constitute an unjustified invasion of another individual's personal privacy under section 21(1) (personal privacy) or section 49(b) (discretion to refuse requester's personal information). Information in the records has also been withheld under section 49(a), taken together with sections 14(1)(d) and/or 13(1).

However, the personal privacy exemptions only apply to information that qualifies as "personal information," as defined in section 2(1) of the *Act*. Accordingly, before reviewing the possible application of those exemptions, I must determine if the records contain "personal information" and, if so, to whom it relates.

The definition of personal information is found in section 2(1) of the *Act*. To satisfy the requirements of the definition in section 2(1), the information must be "recorded information about an identifiable individual," including:

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,

- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except where they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual, and
- (h) the individual's name if 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. 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, older orders of this office established that 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].

On April 1, 2007, amendments relating to the definition of personal information in the *Act* came into effect. To some extent, the amendments formalized the distinction made in previous orders of this office between personal and professional (or business) information for the purposes of the *Act*. Sections 2(3) and (4) state:

- (3) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.

(4) For greater certainty, subsection (3) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

However, it remains true that 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].

Representations

According to the PGT, the records contain the appellant's mother's personal information, including medical, psychiatric and financial information that fits within paragraph (b) of the definition of the term in section 2(1) of the *Act*. The PGT submits that the records contain the personal information of other identifiable individuals, including names, addresses, and telephone numbers, which fall within paragraphs (d) and (h) of the definition. Further, the PGT submits that:

In addition, there is correspondence or notes regarding telephone calls from third parties. The individuals provided this information to the institution in confidence, and there was an expectation that their names and the information they provided would not be released. The individuals providing this information would in all likelihood not agree to provide our office with information in the future if they were aware that their names would be released.

The PGT maintains that it relies on "full and frank disclosure of information" about possible cases of incapacity from third parties in order to carry out its mandate, and these sources include "relatives, neighbours, caregivers, doctors, lawyers, bank officials and other members of the public." The PGT argues that this information is "provided with an expectation of confidentiality in order to encourage and ensure this disclosure" and relies on Orders P-1320 and P-1485. As the balance of the PGT's representations in this section actually relate to the personal privacy exemption, rather than whether the information in the records qualifies as personal information, I will not outline these representations further in this section of the order.

The appellant's representations do not address the issue of whether the information in the records fits within the definition of the term in section 2(1) of the *Act*.

Analysis and Findings

I have reviewed the records to determine whether they contain personal information and, if so, to whom the information relates. I find that the records, save for the exceptions described below, contain personal information relating to identifiable individuals other than the appellant, including his mother and father, that satisfies the definition of personal information under paragraphs (a), (b), (d), (e), (g) and (h) of the definition in section 2(1) of the *Act*.

In addition, I find that some of the records contain information pertaining to the appellant that qualifies as his personal information within the meaning of paragraphs (a), (b), (e) and (h) of the definition in section 2(1) of the *Act*. In particular, I find that the appellant's personal information appears on pages 10-14 and 28-30 only.

However, I find that page 27, a fax cover sheet, does not contain personal information. Moreover, in my view, this record provides a useful starting point for my findings with respect to business or professional information under section 2(3) of the *Act*. Page 27 and many other pages at issue in this appeal contain personal information about the appellant's mother that was obtained from collateral sources. The PGT refers generally to information about potential cases of incapacity received from "relatives, neighbours, caregivers, doctors, lawyers, bank officials and other members of the public." However, this submission is not specific to the facts of this appeal where two of the individuals identified in the records fit within those categories, but five or six others do not.

The PGT cites Orders P-1320 and P-1485 in support of the assertion that this office has previously withheld the personal information and identifiers relating to individuals that have reported concerns about capacity. In my view, these orders have some application in the instance of two identifiable individuals whose personal information appears in the records. The exemption of the personal information of two of the identifiable individuals who were in contact with the PGT regarding this matter is addressed under the discussion of personal privacy, below.

Moreover, in my view, Orders P-1320 and P-1485 can be distinguished with respect to the six other identifiable individuals. In both of those orders, the information at issue was found to constitute the personal information of the reporting individual. The individuals reporting the allegations in those appeals *did* fit within the categories of complainants recited by the PGT in their representations in the present appeal, and the adjudicators were satisfied that they were acting in their personal capacities.

In the present appeal, however, there are a number of individuals employed by community agencies, the municipality, or care facilities, who served as collateral sources of information respecting the alleged incapacity of the appellant's mother. There are also individuals identified in the records who are employed by the PGT. In my view, these individuals were acting in their professional capacities in providing information to the PGT, or performing functions related to the appellant's mother's case file. I am satisfied that these are professional, not personal, undertakings. I am also satisfied that disclosure of their names and business contact information would not reveal anything of a *personal* nature, or other personal information about them [Orders MO-2342, PO-2863 and PO-2773].

Accordingly, I find that under section 2(3) of the *Act*, the names and contact information related to these individuals working in their professional capacities does not qualify as personal information. Since the names and contact information of the individuals does not qualify as personal information within the definition of that term in section 2(1) and only "personal information" can qualify for exemption under sections 21(1) or 49(b), I find that these exemptions do not apply to it.

However, I will now review the application of the law enforcement exemption in section 14(1)(d), with or without consideration of section 49(a), depending on whether the record contains the appellant's personal information.

LAW ENFORCEMENT

According to the exemptions marked on the records, the PGT is relying on section 14(1)(d) to withhold pages 7, 8, 16, and 21 to 34. This section states:

A head may refuse to disclose a record where the disclosure could reasonably be expected to,

disclose the identity of a confidential source of information in respect of a **law enforcement matter**, or disclose information furnished only by the confidential source [emphasis added].

The term "law enforcement" is used in several parts of section 14, and is defined in section 2(1) as follows:

"law enforcement" means,

- (a) policing,
- (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, or
- (c) the conduct of proceedings referred to in clause (b)

The term "law enforcement" has been found to apply to a municipality's investigation into a possible violation of a municipal by-law that could lead to court proceedings [Orders M-16, MO-1245] and a police investigation into a possible violation of the *Criminal Code* [Orders M-202, PO-2085]. Conversely, the term "law enforcement" has been found *not* to apply to a Coroner's investigation or inquest under the *Coroner's Act*, which lacked the power to impose sanctions [Order P-1117].

To meet the burden of proof in section 14(1)(d), the PGT is required to provide "detailed and convincing" evidence to establish a "reasonable expectation of harm." Evidence amounting to speculation of possible harm is not sufficient [Order PO-2037, upheld on judicial review in *Ontario (Attorney General) v. Ontario (Information and Privacy Commissioner)*, [2003] O.J. No. 2182 (Div. Ct.), *Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)].

Representations

The PGT asserts that the records form part of a PGT investigation and that the information was provided in confidence. According to the PGT, it relies on this information in order to investigate allegations that the person, or property, of incapable individuals is at risk. Further, the PGT submits that “allegations may include possible violations of the law, such as: fraud under a power of attorney, assault or failing to provide the necessities [sic] of life.”

The appellant’s representations do not directly address this issue.

Analysis and Findings

The issue raised requires consideration of whether disclosure of the records withheld under section 14(1)(d) could reasonably be expected to disclose the identity of a confidential source of information in respect of a law enforcement matter. Upon my review of the constituent elements of the exemption, it is clear that the application of section 14(1)(d) in this appeal turns on the determination of whether an investigation by the PGT under the *Substitute Decisions Act* qualifies as a “law enforcement matter.” With regard to past orders of this office and my analysis of the issue, I find that it does not.

The PGT’s representations on this possible application of section 14(1)(d) are brief and appear to be based on an assumption that guardianship investigations carried out under the authority of the *Substitute Decisions Act* constitute law enforcement. The PGT provided no additional evidence beyond the mere assertion that the allegations investigated “may include possible violations of the law, such as: fraud under a power of attorney, assault or failing to provide the necessities [sic] of life.” I have not been provided with specific statutory references for the investigative function, descriptions of the authority, or any further explanation that may connect the PGT’s guardianship investigations, or even this investigation specifically, with the definition of “law enforcement” in the *Act* or law enforcement more generally.

A guardianship investigation by the PGT could fit within part (b) of the definition of “law enforcement” in section 2(1) of the *Act* if it is found to be an investigation “that lead[s] or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings.”

In its representations (and also in the decision letter issued to the appellant), the PGT refers to section 27 of the *Substitute Decisions Act*, which is contained in the section of that statute dealing with court-appointed guardians of property. As noted previously, it appears that in the circumstances of this appeal, the relevant provision of the *Substitute Decisions Act* is actually section 62, which relates to temporary guardianship investigations respecting personal care. Section 62(2) of the *Substitute Decisions Act* mandates the PGT to investigate any allegation that a person is incapable of personal care and that serious adverse effects are occurring or may occur as a result. Additional parts of section 62 describe other aspects of the investigation:

- (3) In conducting an investigation under subsection (2), the Public Guardian and Trustee is not required to take any steps that, in his or her opinion, are

unnecessary for the purpose of determining whether an application to the court is required under subsection (3.1).

(3.1) If, as a result of the investigation, the Public Guardian and Trustee has reasonable grounds to believe that a person is incapable of personal care and that the prompt appointment of a temporary guardian of the person is required to prevent serious adverse effects, the Public Guardian and Trustee shall apply to the court for an order appointing him or her as the incapable person's temporary guardian of the person.

Past orders of this office have found that investigations or examinations that may turn up statutory violations which are then subject to regulatory prosecutions meet the definition of law enforcement (see Orders P-302, P-1098, P-1181, PO-2329 and PO-2591). However, in the present appeal, my review of the provisions under which the PGT operates in conducting guardianship investigations reveals that upon completion of the investigation, the PGT is not in a position to enforce or regulate compliance with the *Substitute Decisions Act* or any other law. Rather, if the investigation reveals that the individual is incapable of personal care, an application to the Superior Court of Justice for the appointment of a temporary guardian is the next step. In my view, these particular provisions of the *Substitute Decisions Act* do not establish a penalty or sanction for any offence.

In the circumstances, I find that in conducting its investigation under section 62(2) of the *Substitute Decisions Act* into the allegation that the appellant's mother was incapable, the PGT was not carrying out a law enforcement function as that term is defined in the *Act*, or as it has been interpreted by this office under section 14(1). In reaching this conclusion, I am not suggesting that the PGT cannot or does not cooperate with the police and the Crown in certain cases by sharing information that comes into its possession. However, this does not change my finding that in investigating "any allegation that a person is incapable of personal care," the PGT does not carry out a law enforcement activity that will "lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings."

Accordingly, I find that the records for which the PGT has claimed 14(1)(d) – pages 7, 8, 16 and 21 to 34 – do not qualify for this exemption.

Previously, I found that page 27 of the records does not contain personal information and that its disclosure cannot, therefore, be an unjustified invasion of another individual's personal privacy. In view of my finding that this same page is not exempt under section 14(1)(d), I will order it disclosed to the appellant.

PERSONAL PRIVACY

In circumstances where a record contains both the personal information of the appellant and other individuals, the relevant personal privacy exemption is the exemption at section 49(b). Under section 49(b) of the *Act*, the PGT has the discretion to deny the appellant access to his own personal information if the PGT determines that the disclosure of the information *would* constitute an unjustified invasion of another individual's personal privacy. However, upon

weighing the appellant's right of access to his own personal information against another individual's right to protection of their privacy, the PGT may choose to disclose a record with mixed personal information.

When, however, the records contain only the personal information of other individuals and not the appellant, section 21(1) prohibits the disclosure of this information unless one of the exceptions listed in the section applies. The only exception which might apply in the circumstances of this appeal is section 21(1)(f), which permits disclosure if it does not constitute an unjustified invasion of personal privacy.

Given my finding that pages 10-14 and 28-30 contain the appellant's personal information, as well as the personal information of other identifiable individuals, these pages will be reviewed under the discretionary personal privacy exemption in section 49(b). The remaining pages, with the exception of page 27 which I found above does not qualify for exemption, contain the personal information of other identifiable individuals only, and must be reviewed under the mandatory personal privacy exemption in section 21(1).

General Principles

Regardless of whether the analysis takes place under section 49(b) or section 21(1), sections 21(2), (3) and (4) of the *Act* provide guidance in determining whether the disclosure of personal information would constitute an unjustified invasion of personal privacy.

Section 21(3) lists the types of information whose disclosure is *presumed* to constitute an unjustified invasion of the personal privacy of another individual. Where one of the presumptions in section 21(3) applies to the personal information found in a record, the only way such a presumption against disclosure can be overcome is where the personal information falls under 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 exceptions in section 21(4) and the "public interest override" in section 23 has not been raised or argued in this appeal and, in my view, these provisions do not apply.

If none of the presumptions against disclosure contained in section 21(3) apply, the PGT is obliged to consider the application of the factors listed in section 21(2) of the *Act* as well as all other considerations which are relevant in the circumstances of the case [Order P-99].

I will review those records which do not contain the appellant's personal information under section 21(1) of the *Act*, initially. I will then review the possible application of section 49(b) to the records in which the appellant's personal information is found, along with the personal information of other individuals.

Representations

The PGT's representations on the issue of personal privacy canvass the possible application of the sections 21(1) and 49(b) exemptions in a unified fashion. Furthermore, as noted previously, the PGT's representations regarding the issue of "personal information," included submissions

on the personal privacy exemption. These representations are relevant to the issue of the exemption of information about identifiable individuals who provided information respecting the appellant's mother to the PGT in their personal, as opposed to professional, capacities.

According to the PGT, the disclosure of the requested information to the appellant would result in "an unjustified invasion of the personal privacy of the appellant's mother and the personal privacy of other third parties." Starting with the assertion that none of the exceptions in section 21(4) applies to the information at issue, the PGT submits that the presumptions against disclosure in sections 21(3)(a), (b) and (f) of the *Act* apply. The PGT takes the position that information relating to the appellant's mother's physical and psychiatric status, including possible diagnoses, treatment and condition, falls within section 21(3)(a).

The PGT argues that section 21(3)(f) also applies "to the extent that such information includes reference to the appellant's mother's finances." The PGT relies on Order PO-1773.

Finally, the PGT submits that section 21(3)(b) "definitely applies to a number of records at issue as there was a possible violation of law reported to the Public Guardian and Trustee in accordance with its statutory mandate to investigate – section 27(2) [sic] of the [*Substitute Decisions Act*]." The PGT states that it "became involved in this file as a result of an allegation that the allegedly incapable person was at risk of harm." The PGT does not identify the records it claims are exempt under section 21(3)(b) in its representations and the exemption is not marked on the copies of the records sent to this office.

The PGT submits that the factors in sections 21(2)(f) (highly sensitive) and (h) (supplied in confidence), which favour privacy protection, are relevant in the circumstances of this appeal. The PGT relies on Orders P-1320 and P-1485 in support of its position that an individual making an allegation of incapacity deserves to have their privacy protected. The PGT quotes from Order P-1485 where Inquiry Officer Donald Hale made a finding that the "identity of the complainant is highly sensitive within the meaning of section 21(2)(f). Given that it is linked to allegations of inadequate care of a physically and mentally ill individual, this is a consideration which favours privacy protection." The PGT submits that the very nature of the allegation received renders the information highly sensitive for the purpose of the consideration in section 21(2)(f). According to the PGT, "while the appellant's name may be on some of these documents, the protection of the incapable person's privacy should be paramount."

Apparently in reference to the factor in section 21(2)(h), the PGT submits that individuals who report allegations "do not do so lightly" and likely would not make the allegations "if they knew that their names would be released to the individual that they were making the allegations about." Further, the PGT submits that:

When the institution receives allegations about an individual's capacity and risk of harm, the information is treated in the strictest of confidence. The individuals who bring information to the [PGT] expect to have some degree of confidentiality and, if this confidentiality is not upheld, it would discourage individuals from contacting the [PGT] about situations of potential abuse of incapable adults.

The PGT notes that it reconsidered the records (during the inquiry stage) and concluded that withholding some of them would lead to an absurd result. In the resulting revised decision letter, the PGT disclosed pages 4-6 in their entirety (records of telephone conversations made by and to the requester), as well as portions of pages 10-14 “(records of calls believed to be made by and to the requester – or about the requester – but with the severance of the name of a third party)” [emphasis in original].

Although the appellant’s representations do not expressly deal with the personal privacy exemption, he does express interest in obtaining access to references to him in the PGT records and “information that shows misleading or fraudulent testimony in a proceeding conducted under [the] authority of PGT...” The submissions provided by the appellant include excerpts from capacity proceedings (held in the courts) respecting the appellant’s mother.

Analysis and Findings

Personal Information of Other Individuals

In this appeal, the relevant parts of section 21 state:

(2) A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

- (f) the personal information is highly sensitive; ...
- (h) the personal information has been supplied by the individual to whom the information relates in confidence;

(3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

- (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;
- (b) was compiled and is identifiable as a part of an investigation into a possible violation of law...; ...
- (f) describes an individual’s finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;

In reviewing the records that do *not* contain the appellant’s own personal information, I note that these pages are mainly comprised of the personal information of the appellant’s mother and other family members, obtained from them, or from professionals who became involved in the PGT matter. Based on my own review of the information and the PGT’s submissions with respect to the application of sections 21(3)(a), (b) and (f) of the *Act*, I find that the presumption against

disclosure in section 21(3)(a) applies to most of the personal information about the appellant's mother and that it also applies to personal information about another identifiable individual. Accordingly, where the appellant's mother's and this other individual's personal information appears in the records, it is exempt under the mandatory exemption in section 21(1) as its disclosure would result in a presumed unjustified invasion of her personal privacy.

As stated, the PGT also claimed reliance on section 21(3)(b), the presumption against disclosure which is applicable when the information has been gathered and "is identifiable as a part of an investigation into a possible violation of law." The PGT did not claim reliance on this presumption in its decision letters. Section 21(3)(b) was first mentioned in the PGT's representations. Earlier in this order, I rejected the argument that a PGT guardianship investigation qualified as "law enforcement" in the context of section 14(1)(d). Similarly, I reject the suggestion that the PGT's guardianship investigation constitutes an investigation for the purposes of section 21(3)(b). In my view, there is neither sufficient evidence nor circumstances to support the application of section 21(3)(b) in this appeal, and I find that it does not apply.

The PGT also cited Order PO-1773 in support of its claim that 21(3)(f) applies, suggesting that Adjudicator Holly Big Canoe "agreed with" the PGT that disclosure of financial information in the records would constitute an unjustified invasion of another individual's personal privacy. On my review of this order, however, Adjudicator Big Canoe actually found that section 21(3)(f) did *not* apply in the circumstances of that appeal. She stated (at page 2):

Although the records contain financial information relating to the appellant's brother, the information does not contain the type of details listed in section 21(3)(f), but only relates to his interest in his mother's estate. Accordingly, I find that section 21(3)(f) does not apply.

Indeed, for section 21(3)(f) to apply, the personal information must "[describe] an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness." Upon careful review of the personal information in the records at issue in this appeal, I find that it is not financial information that fits within the parameters of section 21(3)(f), relating as it does expressly to allegations that the appellant's mother was incapable of personal care. Consequently, I find that the presumption against disclosure in section 21(3)(f) does not apply.

However, with respect to the personal information of the appellant's mother and other identifiable individuals contained in the records that does not fit within section 21(3)(a), I agree with the PGT that the factors in sections 21(2)(f) and 21(2)(h) are relevant considerations in this appeal. I am satisfied, for example, that the disclosure of some of this personal information could reasonably be expected to result in significant personal distress to other identifiable individuals given the circumstances [Orders PO-2518, PO-2617, MO-2262 and MO-2344].

As for the factor in section 21(2)(h), I note that the PGT has asserted that individuals who report allegations likely would not do so "if they knew that their names would be released to the individual that they were making the allegations about." In my view, this submission is unfortunate. In its lack of specificity to the real circumstances of this appeal, it suggests that the

appellant is the subject of allegation, when there is really no dispute that the appellant's mother was the subject of the allegations and investigation. Nonetheless, I find that the factor is, generally, relevant because I accept that both the individual supplying the information and the recipient had a reasonable expectation that the information would be treated confidentially, and I find that the expectation is reasonable in the circumstances [Order PO-1670].

In sum, there are two relevant section 21(2) factors that weigh in favour of privacy protection, while none that favour disclosure or access have been argued or established. Accordingly, as no exception applies, I find that the personal information of individuals other than the appellant that appears in the records that is not already subject to section 21(3)(a) is exempt as a consequence of the weight of the factors in section 21(2). Accordingly, under section 21(1) disclosure of the personal information would constitute an unjustified invasion of personal privacy, and I therefore find that it is exempt.

As pages 8 and 9 are exempt under section 21(1) almost in their entirety, I find it unnecessary to review the possible application of section 13(1) (advice or recommendations) separately. In its representations, the PGT limited the claim of section 13(1) to those two pages. On my review, I find that the non-exempt information on pages 8 and 9 could not possibly suggest a course of action that will ultimately be accepted or rejected by the person being advised. Accordingly, I find that the non-exempt information on pages 8 and 9 does not qualify for exemption under section 13(1) of the *Act*.

Personal Information of the Appellant and Other Individuals

I will now review the PGT's reliance on section 49(b) to withhold personal information in pages 10-14 and 28-30.

First, I note that the PGT's representations on pages 10-14 refer to these as "(records of calls believed to be made by and to the requester – or about the requester – but with the severance of the name of a third party)." In the PGT's revised decision, the appellant was granted access to the content of those telephone calls, but denied access to the name, telephone number and "party type" of another individual that is not the appellant. In my view, it would have been helpful for the PGT to admit what appears to have been a data entry error. The PGT apparently believed strongly enough that the caller was the appellant to disclose the content of the calls to him. In my view, it would have been helpful to the appellant for the PGT to explain in the revised decision that the caller's identifying information was withheld because another individual's personal information had been mistakenly entered instead of the appellant's. Regardless, the personal information withheld from pages 10-14 by the PGT is the personal information of another identifiable individual, and I find that there are no factors weighing in favour of its disclosure to the appellant in the circumstances. Accordingly, I find that it is exempt under section 49(b).

The only other record to consider under section 49(b) is the reporting letter (at pages 28-30) from a social services agency to the PGT with respect to the guardianship investigation of the appellant's mother. Some information in this record does not constitute "personal information" pursuant to my findings earlier in this order, and I will order it disclosed to the appellant. Moreover, I note that the appellant's personal information appears only in a brief portion of a

paragraph on the second page of this letter. It is co-mingled with reference to two other identifiable individuals as well as the appellant's mother. I find that none of the presumptions claimed by the PGT applies to this information. Furthermore, as it is information that is already within the appellant's knowledge, I find that in the circumstances of this appeal, it would be absurd to withhold it. Accordingly, I will order the PGT to disclose the information to the appellant.

However, I also find that the presumption against disclosure in section 21(3)(a) applies to most of the rest of this letter's contents, as the personal information relates to the appellant's mother's and another individual's "medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation." As the presumption against disclosure has been established, it cannot be rebutted. Moreover, I have considered the competing interests of the appellant's right to access this information against the protection of the privacy of other individuals, including his mother, and I am satisfied that disclosure of the remainder of this record would constitute an unjustified invasion of their personal privacy. Accordingly, I find that the exemption in section 49(b) applies to the remainder of the personal information in this record and I am satisfied that the PGT exercised its discretion properly in withholding it.

ORDER:

1. I uphold the PGT's decision to deny access to the personal information on pages 1 to 3, 7 to 26, and 28 to 37. I have highlighted the personal information on these pages and it is not to be disclosed to the appellant. Copies of pages to be withheld in full will **not** be provided with this order.
2. I order the PGT to disclose to the appellant by **April 5, 2010**, but not earlier than **March 31, 2010**, the withheld portions of pages 2, 7 to 16, 27 to 34 and 37 that do not qualify for exemption pursuant to my findings in this order.
3. In order to verify compliance with the terms of this order, I reserve the right to require the PGT to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 2.

Original signed by: _____
Daphne Loukidelis
Adjudicator

_____ March 1, 2010