



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

ORDER PO-2949

Appeal PA08-246

Office of the Public Guardian and Trustee



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NATURE OF THE APPEAL:

The Ministry of the Attorney General (the Ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*), for access to records relating to the requester's deceased father, which are held at the Office of the Public Guardian and Trustee (the PGT).

Operating as part of the Ministry, the PGT has a diverse mandate that includes searching for heirs to the estates it administers, monitoring charities, and protecting mentally incapable people. Under the *Substitute Decisions Act, 1992*¹, 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.

By way of background, the Guardianship Investigations Unit of the PGT received information relating to the possible financial abuse of the requester's deceased father in November 2004 while he was resident in a long term care facility (the nursing home). An investigator was assigned to investigate and during the course of doing so, received correspondence and telephone calls relating to the deceased. The investigator had communication with a number of individuals, including the requester's siblings and third parties, relating to the abuse allegations. The deceased passed away in December 2005. In November 2007, the requester made a broad request for information, including records in the hands of long term care facilities and police departments. The PGT provided limited disclosure of records in its custody or control. The requester, subsequently, submitted a second request in July 2008, which is the subject of this appeal.²

The PGT issued a decision granting partial access to records responsive to this request. The PGT denied access to the withheld information, pursuant to the mandatory exemption in section 21(1) (personal privacy) and the discretionary exemption in 13(1) (advice or recommendations) of the *Act*. In support of its section 21(1) exemption claim, the PGT raised the application of the presumptions in sections 21(3)(a) (medical history) and 21(3)(f) (finances).

The requester (now appellant) appealed the decision.

During the mediation stage of the appeal process, the PGT issued a supplementary decision in which it claimed additional discretionary exemptions, specifically the law enforcement exemptions at sections 14(1)(b) (law enforcement investigation) and 14(1)(d) (confidential source) of the *Act*. However, the PGT later withdrew its claim to these exemptions and they are no longer at issue in this appeal.

As the records at issue appeared to contain information pertaining to other identifiable individuals, the PGT advised the mediator that with their consent it would be willing to reconsider its decision and disclose additional information. Accordingly, the mediator contacted

¹ S.O. 1992, Ch. 30

² Source: OPGT representations, dated July 21, 2009.

four of the affected individuals and obtained their consent to the disclosure of their personal information to the appellant.

Upon receipt of the consents, the PGT issued a second supplementary decision letter, granting access in full to some additional records and parts of others. In its decision, the PGT indicated that information from pages 4 and 17 of the records had been severed under section 21(1) of the *Act*, and that it continues to withhold the remainder of the records under section 13(1) and section 21(1), read with sections 21(3)(a) and 21(3)(f).

Also during mediation, the appellant indicated that she believes additional records should exist. The PGT agreed to conduct a further search for responsive records. The PGT reported that no additional records were located. However, the PGT acknowledged that it had not included seven pages that had been identified as responsive in a previous access request submitted by the appellant. Since the appellant's current request includes all records relating to her deceased father, the PGT agreed to include these seven pages as part of this appeal. With respect to these seven pages, the PGT issued a third supplementary decision, denying access again pursuant to section 21(1), read with sections 21(3)(a), 21(3)(f), and section 13(1). The PGT also provided the appellant with a detailed index of the records remaining at issue in the appeal.

In a subsequent discussion with the mediator, the PGT advised that it had incorrectly indicated in its index of records and its second supplementary decision that access had been granted to page 6 of the records, when in fact this page had been withheld pursuant to section 21(1) of the *Act*. Accordingly, the PGT issued a revised decision and an updated index of records confirming its decision to withhold page 6 of the records (Record 3).

In its revised decision, the PGT advised that it had agreed to release those portions of pages 2, 3, 9, 11, 15, and 16 remaining at issue. Accordingly, these pages are no longer at issue in this appeal. The PGT also advised that it was granting access in part to pages 4 and 17 (Records 1 and 10 respectively). The PGT confirmed that it continues to withhold the records remaining at issue pursuant to section 21(1) and 13, in accordance with the PGT's revised index of records.

The appellant continues to believe that more records responsive to her request should exist and she remains interested in the records to which access has been denied. Accordingly, reasonable search and the application of sections 21(1) and 13(1) to the withheld information remain at issue.

In addition to the above issues, the appellant has indicated that she wishes to raise section 21(4)(d) (compassionate reasons) of the *Act* as an issue in this appeal.

The parties were unable to resolve the appeal during the mediation stage of the process and the file was moved to the adjudication stage for an inquiry.

I commenced my inquiry by issuing a Notice of Inquiry, seeking representations from the PGT. The PGT submitted representations in response and agreed to share them, in their entirety, with the appellant. In its representations, the PGT states that it is no longer relying on the discretionary exemption in section 13(1) to deny access to page 39 of the records. As no other

exemptions have been claimed for page 39, this record is no longer at issue and I will order the PGT to disclose it to the appellant, in its entirety.

I then sought representations from the appellant and included with my Notice of Inquiry a complete copy of the PGT's representations. The appellant submitted representations in response. The appellant's representations were handwritten and were, unfortunately, to a large extent illegible and incoherent. However, after careful review I was able to discern some information from the appellant's representations on the application of the section 21(4)(d) "compassionate grounds" exception.

I shared a summary of the appellant's representations with the PGT and I invited the PGT to respond with reply representations. The PGT submitted reply representations.

RECORDS:

There are 20 records remaining at issue (totaling 21 pages), as set out in the following table:

Record #	Description	Severed or Withheld in Full	Exemptions Claimed
1 (page 4)	PGT Activity Summary – incoming telephone call, November 29, 2004	Severed	21(1)
2 (page 5)	PGT Activity Summary – outgoing telephone call, November 29, 2004	Withheld in full	21(1)
3 (page 6)	PGT Activity Summary – incoming telephone call, November 30, 2004	Withheld in full	21(1)
4 (page 7)	PGT Activity Summary – incoming telephone call, November 30, 2004	Withheld in full	21(1)
5 (page 8)	PGT Activity Summary – incoming telephone call, November 30, 2004	Withheld in full	21(1)
6 (page 10)	PGT Activity Summary – incoming telephone call, November 30, 2004	Withheld in full	21(1)
7 (page 12)	PGT Activity Summary – outgoing telephone call, December 3, 2004	Withheld in full	21(1)
8 (page 13)	PGT Activity Summary – incoming telephone call, December 7, 2004	Withheld in full	21(1)

Record #	Description	Severed or Withheld in Full	Exemptions Claimed
9 (page 14)	PGT Activity Summary – incoming telephone call, December 17, 2004	Withheld in full	21(1)
10 (page 17)	PGT Activity Summary – outgoing telephone call, February 8, 2005	Severed	21(1)
11 (page 18)	PGT Activity Summary – outgoing telephone call, February 9, 2005	Withheld in full	21(1)
12 (page 19)	PGT Activity Summary – incoming telephone call, February 15, 2005	Withheld in full	21(1)
13 (page 23)	Email exchange, April 23, 2008	Withheld in full	13(1)
14 (page 40)	Email, May 2, 2008	Withheld in full	13(1)
15 (page 41)	PGT Activity Summary – incoming fax, November 29, 2004	Withheld in full	21(1)
16 (page 42)	Fax cover page, November 26, 2004	Withheld in full	21(1)
17 (page 43)	PGT Activity Summary – incoming telephone call, November 30, 2004	Withheld in full	21(1)
18 (page 44)	PGT Activity Summary – incoming fax, January 25, 2005	Withheld in full	21(1)
19 (pages 45-46)	Letter, January 18, 2005	Withheld in full	21(1)
20 (page 47)	PGT Activity Summary – outgoing telephone call, February 24, 2005	Withheld in full	21(1)

DECISION:

I have reviewed the records and the submissions provided by both parties, and find as follows:

1. Some of the information at issue does not qualify as the personal information of identifiable individuals, within the meaning of that term in section 2(1), and should be disclosed to the appellant, as it does not qualify for exemption under section 21(1).
2. Some of the information at issue qualifies as the personal information of identifiable individuals other than the appellant. However, the submissions made by the PGT do not persuade me that disclosure of this information is not desirable for compassionate

reasons. After considering all of the evidence before me, I conclude that the exception to the personal privacy exemption in section 21(4)(d) applies in the circumstances of this appeal to much of the personal information. Accordingly, I find that much of the information should be disclosed to the appellant as a result of the application of the section 21(4)(d) exception.

3. Some information in the records contains the personal information of affected individuals that is exempt from disclosure under section 21(1).
4. Section 13(1) does not apply to the information at issue under this exemption and, accordingly, this information should be disclosed to the appellant.
5. The PGT has conducted a reasonable search for records responsive to the appellant's request.

I have set out my reasons below in support of my findings.

DISCUSSION:

PERSONAL INFORMATION

What constitutes "personal information"?

In order to determine whether section 14 of the *Act* applies, it is necessary to decide whether the records contain "personal information" and, if so, to whom it relates. That term is defined in section 2(1) 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,

...

- (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. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information.³

Sections 2(3) and 2(4) also relate to the definition of personal information. These sections 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.

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.⁴

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.⁵

To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.⁶

Representations

The PGT states that the records at issue contain the personal information of the deceased, namely information relating to his medical and psychiatric history and information relating to financial transactions to which he was involved.

³ Order 11

⁴ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225

⁵ Orders P-1409, R-980015, PO-2225 and MO-2344

⁶ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.)

The PGT also states that some of the records at issue contain information about other identifiable individuals, including correspondence or notes regarding telephone calls from these individuals to staff at the PGT.

The appellant did not provide representations on the extent to which the information at issue contains “personal information”.

Analysis and findings

Having carefully reviewed the records at issue and considered the PGT’s representations, I conclude that, for the most part, the records contain the deceased’s personal information, including his name, information about his medical and psychiatric condition, information about his financial and legal status, and the views of other individuals about him.

I also find that some of the records contain the personal information of other identifiable individuals, including various members of the deceased’s family. This information includes their names and, in some cases, their views about the deceased and their concerns about his circumstances. Moreover, I also note that two records (Records 13 and 14) contain the personal information of the appellant, including her name and other information about her. The PGT has relied on the application of the discretionary exemption in section 13(1) to deny access to these records in their entirety.

Finally, I also find that portions of the severed records do not contain personal information. Some of the severed information can be described as administrative information that is generic in nature, which does not reveal information about an identifiable individual. Accordingly, I find that this information does not qualify as personal information within the meaning of that term in section 2(1) of the *Act*, and I will order it disclosed as only personal information can be exempt under section 21(1).

Other portions of the records contain information about identifiable individuals in their “professional or official capacity” within the meaning of section 2(3), including their names and, in some cases, their titles, business telephone numbers and business addresses. These individuals, based upon my careful review of the records, appear to be associated with the deceased and/or members of his family in a professional, rather than personal capacity. This information includes the name and contact information for the director of the nursing home, staff at the PGT, a police officer with Niagara Regional Police, an employee at the Ministry of Health and Long Term Care, an employee with a bank and legal advisors acting on behalf of various members of the deceased’s family. In my view, based on the operation of section 2(3), this information does not qualify as the personal information of any identifiable individuals and should also be disclosed.

PERSONAL PRIVACY

Having determined that some of the records contain the personal information of individuals other than the appellant, the mandatory exemption at section 21(1) requires that the PGT refuse to disclose this information, unless one of the exceptions to the exemption at sections 21(1)(a)

through (f) applies. In my view, the only exceptions which could have any application in the present appeal are set out in sections 21(1)(a) and (f), which state:

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

- (a) upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access;
- (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

Section 21(1)(a)

As alluded to above, during the mediation stage of the appeal process, the PGT disclosed personal information pertaining to four identifiable individuals after being provided with their consents to disclosure.

On my review of the records, I note that that the PGT did disclose personal information relating to these four individuals. However, I also note that the PGT did not disclose some information relating to three of the four identifiable individuals (in Records 3, 6, 7, 8, 12, 15, 16, 18, 19 and 20). Section 10(2) of the *Act* obliges the institution to disclose as much of any responsive record as can reasonably be severed without disclosing material which is exempt. The PGT states that it severed some of the records and that no further severances are appropriate. In my view, noting the consents received from these three identifiable individuals, I find that some of the personal information pertaining to these individuals could be disclosed without disclosing material that might otherwise be exempt under section 21(1). Accordingly, I will order the PGT to disclose this information.

Section 21(1)(f)

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

The Divisional Court has stated that once a presumption against disclosure in section 21(3) has been established, it cannot be rebutted by either one or a combination of the factors set out in section 21(2). A section 21(3) presumption can be overcome, however, if the personal information at issue falls within the ambit of section 21(4) or if the “compelling public interest” override provision at section 23 applies.⁷ Section 21(4)(d) has been raised by the appellant and has potential relevance to this appeal.

⁷ *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767.

In this case, the PGT has raised the application of the presumptions in section 21(3)(a) and (f). The PGT's representations are extremely brief and provide no insight into how these presumptions apply to the information at issue. The appellant's representations do not address the application of these presumptions at all.

Nevertheless, based on my review of the records, I accept that some of the deceased's personal information in the records relates directly to his "medical" and/or "psychiatric condition" and, to a lesser extent, broadly describes his "financial history." However, based on the conclusions I reach below regarding the application of section 21(4)(d) to some of the personal information at issue, I need not make a definitive finding on the application of the section 21(3)(a) and (f) presumptions in this case.

Section 21(4)(d) – compassionate reasons

In 2006, identical amendments were made to both the *Act* and the *Municipal Freedom of Information and Protection of Privacy Act* (the *Municipal Act*) to facilitate greater disclosure of information to close family members about the deaths of loved ones. Section 21(4)(d) was added to the *Act* and section 14(4)(c) was added to the *Municipal Act*.

Section 21(4)(d) states:

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

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

The compassionate reasons exception was first applied by Assistant Commissioner Brian Beamish in Order MO-2237, in which he applied the *Municipal Act* equivalent of section 21(4)(d). In determining the scope of the section, he reviewed the relevant legislative history. He came to the following conclusion regarding the application of the section:

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

This approach has been consistently adopted in similar cases.⁸ I adopt this approach in determining whether the information remaining at issue in this case should be disclosed to the appellant.

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

In Order MO-2237, Assistant Commissioner Beamish determined that the application of this section requires a consideration of the following questions, all of which must be answered in the affirmative in order for the section to apply:

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

These steps have been followed in subsequent orders issued by this office. I agree with and adopt this approach in determining the application of section 21(4)(d) in this appeal.

Step 1 – Personal Information of the Deceased

The PGT acknowledges that the records at issue contain the personal information of the deceased.

As stated above, I have found that the information in the records at issue in this appeal constitutes the personal information of the deceased and various members of the deceased’s family. I acknowledge that this personal information is somewhat intertwined, because the records contain, in some limited cases, the views and opinions of members of the deceased’s family about the deceased or other information that describes the nature of their relationship with the deceased. However, as noted above in the background section of this order, four affected individuals (all relatives of the deceased) have consented to the release of their personal information. The PGT has disclosed some of the personal information relating to these affected individuals. This information is, therefore, no longer at issue in this appeal. However, I also note that the PGT has failed, in some cases, to disclose personal information relating to these individuals in accordance with the consents provided. In my view, the remaining personal information of these affected individuals can be isolated and should, therefore, be disclosed.

I note, as well, that two records (Records 3 and 19) contain the personal information of other affected individuals (also relatives of the deceased) who did not consent to the release of their personal information. Record 3 contains the intertwined personal information of the deceased and one of these affected individuals. Record 19 contains the personal information of both of these affected individuals intertwined with the personal information of the deceased and one affected person who did consent to the release of their personal information. In my view, the personal information of the two non-consenting individuals can be isolated from the personal

⁸ See, for example, Orders MO-2245, MO-2420, MO-2515 and PO-2850.

information of the deceased and the consenting individual's personal information by severing all identifying information of the non-consenting affected individuals, including their names and other information that could reveal their identities. Once this exercise is completed, only the personal information of the deceased and the consenting individual remains.

To summarize, as the records at issue contain the deceased's personal information, I am satisfied that the first requirement for the application of section 21(4)(d) has been satisfied.

Step 2 – Spouse or “Close Relative”

The term “close relative” is defined in section 2(1) of the *Act* as follows:

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

The PGT states that it was not clear at the time of processing the request that the appellant was a close relative of the deceased. The appellant states that she is, in fact, one of the deceased's children.

I am satisfied that the appellant is the deceased's daughter and, as a result, a child of the deceased whose personal information is contained in the records at issue. In my view, the legislative history of section 21(4)(d) points to an objective determination of the second requirement, not one based on subjective factors, such as, the nature of the relationship between a close relative and the deceased. Accordingly, as a child of the deceased, I am satisfied that the appellant qualifies as a close relative as defined in the *Act*. I find that the second requirement for the application of section 21(4)(d) is satisfied.

Step 3– Desirable for Compassionate Reasons

While the appellant's representations are largely illegible and incoherent, the following is clear. The appellant states that she and members of her family are very distraught regarding the circumstances surrounding the deceased's death while he was a resident at the nursing home. The appellant believes that her father was mistreated while living in the nursing home and she states that she seeks the information at issue, on behalf of members of her family, in the hopes of gaining insight into her father's treatment at the home and the steps taken by the PGT to investigate the family's concerns. The appellant states that she seeks her deceased father's personal information in the interests of achieving closure regarding his death.

The PGT states that it did not actively investigate the appellant's allegations regarding the deceased's treatment while he resided in the nursing home and, accordingly, it does not have a position on the veracity of her allegations. Under the circumstances, the PGT takes the position that this is not a case in which disclosure of the deceased personal information is desirable for compassionate reasons. The PGT adds that in determining whether to release the information at issue it determined that the information in the records was provided in confidence and that, therefore, disclosure of the information at issue would compromise the privacy rights of third parties.

As noted above in the passage quoted from Order MO-2237, the Legislature intended that a broad and all encompassing approach be taken to the consideration by this office of whether or not disclosure is “desirable for compassionate reasons.” This office has, accordingly, taken a broad approach in determining whether the disclosure of information in a particular case is “desirable for compassionate purposes.”⁹

I adopt this broad approach in considering the third requirement for the application of section 21(4)(d) in the circumstances of this case. I am satisfied that disclosure of much of the personal information remaining at issue in the records is desirable for compassionate reasons and does not constitute an unjustified invasion of the deceased’s privacy or the privacy of the affected individuals who have not consented to the release of their personal information, so long as their personal identifiers are severed.

I understand that the PGT believes that the appellant has failed to establish compassionate grounds for seeking the information in the records and that disclosure of the information being sought would unduly contravene the privacy rights of affected individuals.

In my view, while the appellant’s representations are difficult to decipher, I find her stated interest, of gaining insight into her father’s treatment while resident at the nursing home, was motivated by a genuine desire to achieve some closure. I am satisfied that understanding the full details and circumstances surrounding a loved one’s treatment and subsequent death is an integral part of the grieving process and that gaining greater knowledge of the circumstances of that death is, by its very nature, compassionate. In my view, it is natural for a child to want as much information as possible about a parent’s death in order to undertake and complete the difficult grieving process. Accordingly, while the appellant may not have articulated her feelings clearly, I find that further disclosure is desirable for compassionate reasons in this case. I am also satisfied that much of the information remaining at issue can be disclosed on compassionate grounds without compromising the personal privacy of the affected individuals. Accordingly, I find that the third requirement for the application of section 21(4)(d) is satisfied.

To conclude, I find that the records at issue contain information that meets the three requirements under section 21(4)(d) and I will order the PGT to disclose this information on compassionate grounds to the appellant.

I will address, below, the treatment of the personal information about the affected individuals that remains at issue.

Personal information remaining at issue

The personal information that remains at issue consists of the personal identifiers and other information about the two affected individuals who did not consent to the disclosure of their personal information. As noted above, this information is contained within Records 3 and 19.

⁹ See, for example, Orders MO-2237, MO-2245, MO-2420 and PO-2850.

The PGT states that the information at issue relates substantially to the deceased's medical and psychiatric history as well as his financial circumstances. Accordingly, the PGT relies on the presumptions in sections 21(3)(a) and (f), which state:

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;

...

(f) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;

The PGT does not provide any further submissions regarding the possible application of the presumptions in this case and the appellant does not address the application of the presumptions in her representations. Accordingly, I am left to review the personal information of the affected individuals that remains at issue in Records 3 and 19 to determine whether either one of the presumptions applies to it.

As noted above, Records 3 and 19 contain the personal information of the deceased and the two affected individuals who have not consented to the disclosure of their personal information. I acknowledge that some of the information in these records relates to the deceased's medical or psychological condition or evaluation, including discussion of his care and psychological health while a resident at the nursing home. However, having found that section 21(4)(d) applies to all of the deceased's personal information, including the personal information about him in Records 3 and 19, I need not consider the application of the presumptions in sections 21(3)(a) and (f) to the deceased's personal information.

Turning to the personal information of the two affected individuals, I find the information remaining at issue does not relate to their medical, psychiatric or psychological history, diagnosis, treatment or evaluation. Nor does it describe their individual finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness. Rather, the information remaining at issue in Records 3 and 19 consists strictly of the names, personal identifiers and other limited personal information about these two affected individuals.

Therefore, I conclude that the presumptions in section 21(3)(a) and (f) do not apply to the affected individuals' personal information. I also find that no other presumptions would apply in the circumstances of this case to this information.

Having found that none of the presumptions in section 21(3) apply, I must consider the extent to which there are any factors that weigh in favour of or against disclosure of the information remaining at issue. The PGT has raised the application of the factors in sections 21(2)(f) and (h) in support of non-disclosure. These sections read:

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;

The appellant does not offer any representations that discuss the application of these or any other factors regarding the disclosure or non-disclosure of the personal information at issue.

On my review of the information remaining at issue, I note that the two affected individuals have chosen to maintain their confidentiality during the entire request and appeal processes. I am satisfied that their names, personal identifiers and other information related to them is highly sensitive, placed in the context of the surrounding information about the deceased. Accordingly, having determined that the deceased's personal information should be disclosed, pursuant to section 21(4)(d), I am prepared to accept that the personal information about the two affected individuals is highly sensitive and that non-disclosure of this information outweighs any interest in disclosure that might exist.

This remaining information does not fall within the ambit of any other provision in section 21(4). In addition, the application of the "public interest override" at section 23 of the *Act* has not been raised, and I find that it has no application in the circumstances of this appeal.

In conclusion, as a result of the application of the factors in sections 21(2)(f) and (h), I find that the disclosure of the remaining personal information in these records would result in an unjustified invasion of the personal privacy of individuals other than the appellant. Therefore, this information is exempt under section 21(1).

ADVICE OR RECOMMENDATIONS

I will now examine the application of section 13(1) to Records 13 and 14, which the PGT has applied to deny access to the contents of these records in their entirety. Section 13(1) states:

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

The purpose of section 13 is to ensure that persons employed in the public service are able to freely and frankly advise and make recommendations within the deliberative process of government decision-making and policy-making. The exemption also seeks to preserve the

decision maker or policy maker's ability to take actions and make decisions without unfair pressure.¹⁰

Previous orders have established that advice or recommendations for the purpose of section 13(1) must contain more than mere information.¹¹

“Advice” and “recommendations” have a similar meaning. In order to qualify as “advice or recommendations”, the information in the record must suggest a course of action that will ultimately be accepted or rejected by the person being advised.¹²

Advice or recommendations may be revealed in two ways:

- the information itself consists of advice or recommendations
- the information, if disclosed, would permit one to accurately infer the advice or recommendations given¹³

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

- factual or background information
- analytical information
- evaluative information
- notifications or cautions
- views
- draft documents
- a supervisor's direction to staff on how to conduct an investigation¹⁴

¹⁰ Orders 24 and P-1398, upheld on judicial review in *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner)* (1999), 118 O.A.C. 108 (C.A.)

¹¹ see Order PO-2681

¹² Orders PO-2028, PO-2084, upheld on judicial review in *Ontario (Ministry of Northern Development and Mines) v. Ontario (Assistant Information and Privacy Commissioner)*, [2004] O.J. No. 163 (Div. Ct.), aff'd [2005] O.J. No. 4048 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 564; see also Order PO-1993, upheld on judicial review in *Ontario (Ministry of Transportation) v. Ontario (Information and Privacy Commissioner)*, [2005] O.J. No. 4047 (C.A.), leave to appeal refused [2005] S.C.C.A. No. 563

¹³ Orders PO-2028, PO-2084, upheld on judicial review in *Ontario (Ministry of Northern Development and Mines) v. Ontario (Assistant Information and Privacy Commissioner)*, (cited above, footnote 12); see also *Ontario (Ministry of Transportation) v. Ontario (Information and Privacy Commissioner)*, (cited above, footnote 12)

¹⁴ Order P-434; Order PO-1993, upheld on judicial review in *Ontario (Ministry of Transportation) v. Ontario (Information and Privacy Commissioner)*, (cited above, footnote 12); Order PO-2115; Order P-363, upheld on judicial review in *Ontario (Human Rights Commission) v. Ontario (Information and Privacy Commissioner)* (March 25, 1994), Toronto Doc. 721/92 (Ont. Div. Ct.); Order PO-2028, upheld on judicial review in *Ontario (Ministry of Northern Development and Mines) v. Ontario (Assistant Information and Privacy Commissioner)*, (cited above, footnote 12)

Representations

The PGT states that Records 13 and 14 “reflect a communication between public servants and advice is being made by one individual to another on the course to take.” The PGT submits that the specific advice given relates to the “manner that the [PGT] needs to proceed with correspondence [...]” with a recommendation to “forward the document on to a specific department.” The PGT concludes that disclosure of these records would “provide the appellant with information about the policies of the [PGT].”

The appellant’s representations do not address this issue.

Analysis and findings

Having carefully reviewed Records 13 and 14 and considered the PGT’s representations, I conclude that none of the information contained in these records qualifies for exemption under section 13(1).

Record 13 comprises an email exchange between two PGT employees regarding an inquiry by the appellant about certain health records relating to the deceased. In my view, the exchange simply confirms the administrative steps to be taken by PGT employees in response to the appellant’s request. I am not satisfied that this exchange suggests a course of action that will ultimately be accepted or rejected by a person being advised.

Record 14 consists of an email from a PGT employee to a number of other PGT employees, again regarding the status of the appellant’s inquiry about certain health records relating to the deceased. In my view, this record reports on the status of the inquiry and the steps that will likely follow in the process. Again, I am not satisfied that this email suggests a course of action that will ultimately be accepted or rejected by a person being advised.

ADEQUACY OF SEARCH

The appellant asserted at the mediation stage of the appeal process that she believes further responsive records exist.

Section 24 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

- (1) A person seeking access to a record shall,
 - (a) make a request in writing to the institution that the person believes has custody or control of the record;
 - (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record; and

(2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour.¹⁵

Previous orders of this office have established that when a requester claims that additional records exist beyond those identified by an institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 17.¹⁶ If I am satisfied by the evidence before me that the search carried out was reasonable in the circumstances, this ends the matter. However, if I am not satisfied, I may order the PGT to carry out further searches.

The *Act* does not require the PGT to prove with absolute certainty that further records do not exist, but the PGT must provide sufficient evidence to show that a reasonable effort to identify and locate responsive records has been made.¹⁷ Similarly, although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.

Representations

The PGT provided an affidavit that documents the search efforts of the PGT in response to the appellant's request. The affidavit was prepared by an individual who is counsel with the PGT and has responsibility for overseeing the processing of access to information requests in the Client Services Department of the PGT (FOI Counsel).

In her affidavit, FOI Counsel provides a chronology of the steps that were taken to process the appellant's request, submitting that in responding to the request, an email was sent to the PGT investigator who had carriage of the file and the assistant to the Guardianship Investigations Unit (the Unit) with a request to locate all records relating to the deceased. Next, a full search was conducted on all databases available to the Unit and that she was provided with and reviewed all responsive records, both hard copy and computer generated.

The FOI Counsel states that no lawyer for the PGT was involved with the file and, therefore, no legal file exists, although she acknowledges that during the course of investigating allegations, the Unit will occasionally receive documents from other sources, such as banks, medical facilities and nursing homes. However, the FOI Counsel states that in this case, she was advised that a full investigation was not carried out and, as a result, the PGT did not receive documents from other institutions.

The appellant's representations do not shed any light on the search issue.

¹⁵ Orders P-134, P-880

¹⁶ Orders P-85, P-221, PO-1954-I

¹⁷ Order P-624

Analysis and findings

As previously stated, in appeals involving a claim that additional records exist, the issue to be decided is whether an institution has conducted a reasonable search for responsive records as required by section 24 of the *Act*. Furthermore, although requesters are rarely in a position to indicate precisely which records an institution has not identified, a reasonable basis for concluding that additional records might exist must still be provided.

I am persuaded by the available evidence that the PGT made a reasonable effort to identify and locate any existing records that are responsive to the appellant's request. In addition, I accept that appropriate PGT staff conducted searches and that their efforts were properly monitored and directed by the FOI Counsel. Furthermore, I note that the appellant has not provided any coherent evidence to refute the PGT's search efforts.

Accordingly, based on the information provided by the PGT and the circumstances of this appeal, I find that the search for records responsive to the request was reasonable for the purposes of section 24 of the *Act*, and I dismiss this part of the appeal.

ORDER:

1. I order the PGT to disclose page 39 of the records in its entirety to the appellant by **March 2, 2011**.
2. I order the PGT to disclose Records 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 20 in their entirety by **March 8, 2011** but not before **March 2, 2011**.
3. I order the PGT to disclose Records 3 and 19, in part, to the appellant in accordance with the highlighted versions of these records provided to the PGT with its copy of this order, by **March 8, 2011** but not before **March 2, 2011**. To be clear, the PGT is not to disclose to the appellant the portions of these records that have been highlighted in yellow.
5. I uphold the PGT's search for responsive records.
6. I order the PGT to provide me with copies of the severed versions of Records 3 and 19 that it discloses to the appellant.
7. I remain seized of this matter in order to insure compliance with order provisions 1, 2, 3 and 6.

Original signed by: _____
Bernard Morrow
Adjudicator

January 31, 2011