Information and Privacy Commissioner,
Ontario, Canada

Commissaire à l'information et à la protection de la vie privée,
Ontario, Canada

ORDER PO-2998

Appeal PA09-437

Ministry of Government Services

September 28, 2011

Summary: The appellant sought access to records related to the marriage of an identified deceased individual that took place in 1958. The Ministry of Government Services denied access to some of the information in the records, relying on the personal privacy exemption in section 21(1) of the *Act*. The presumption against disclosure in section 21(3)(h) applies to some of the information in the records. The unlisted factors of "diminished privacy after death" and "benefit to unknown heirs" ultimately weigh in favour of disclosure of other information. The ministry is ordered to disclose portions of the records.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, ss. 2(1), 21(1), 21(2)(a), (c), (d), (f) & (h), 21(3)(h)

Orders and Investigation Reports Considered: Orders PO-2979, PO-2877, PO-2807, PO-2497, PO-2198, PO-1923, PO-1790-R, P-1232, P-309

OVERVIEW:

[1] This order addresses a request submitted by a commercial heir tracer under the *Freedom of Information and Protection of Privacy Act* (the *Act)* to the Ministry of Government Services (the ministry) for access to a copy of the marriage registration issued in 1958 for a named deceased individual. The ministry granted partial access to the records, but denied access to other portions on the basis that disclosure would result in an unjustified invasion of personal privacy under the mandatory exemption in section 21(1) of the *Act*.

[2] The requester appealed the ministry's decision to this office. As there were other appeals with the same parties that raised similar issues awaiting adjudication, this appeal was placed on hold pending the release of orders in those appeals. In March 2010, Adjudicator Catherine Corban issued Orders PO-2876 and PO-2877, and this appeal was reactivated. The ministry declined to change its access decision in this appeal based on the findings in Orders PO-2876 and PO-2877; consequently, this appeal was transferred to the adjudication stage.

[3] During my inquiry into the appeal, I asked the ministry to specifically address Adjudicator Corban's analysis and findings in Orders PO-2876 and PO-2877. In response to the Notice of Inquiry, the ministry issued a revised decision letter, disclosing some previously withheld information. I also received the ministry's representations and, in turn, the appellant's representations in response to my request to provide them following my review of the ministry's submissions.[1]

[4] In this order, I find that certain portions of the affidavit and statement of marriage are exempt pursuant to section 21(1), with reference to the presumption in section 21(3)(h), while other portions of the records must be disclosed to the appellant, either because they do not qualify as personal information according to the definition of the term in section 2(1) of the *Act* or because a balancing of the applicable section 21(2) factors weighs in favour of disclosure.

RECORDS:

[5] At issue are two records contained on one 11" X 17" page, titled Form 4 [Section 13] Affidavit and Form 8 [Section 28 (1)] Statement of Marriage. The withheld portions of the record include the following:

Information about the deceased bride and groom:

- place of birth
- religious denomination
- citizenship
- racial origin
- signatures[2]

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[1] In its representations, the ministry addressed the public interest override in section 23, notwithstanding that the appellant appears not to have raised the issue during mediation. Further, I had not sought representations from the parties on its possible application, in part due to the provision having been found inapplicable in many prior orders dealing with the identical parties (see, most recently, Order PO-2877, p.12). I will not be addressing the public interest override in this order.

[2] The ministry's severance of the records in its revised decision included one inconsistency: the signatures of the bride and groom were disclosed where they appear in the affidavit, but are severed on the statement of marriage. While this may have been inadvertence on the ministry's part (because the names of the bridal couple are known to the appellant), I will consider the possible application of section 21(1) to the signatures for the sake of completeness.

Information about other individuals:

- birthplace of bride's and groom's parents
- witnesses' signatures and addresses
- signature, religious denomination and address of the place of worship of the officiant who solemnized the marriage

ISSUES:

A. Do the records contain "personal information"?
B. If the records contain personal information, would disclosure result in an unjustified invasion of another individual's personal privacy under section 21(1)?

DISCUSSION:

A. DO THE RECORDS CONTAIN "PERSONAL INFORMATION"?

[6] The ministry has withheld information in this appeal under section 21(1) of the *Act*, which is as a mandatory exemption designed to protect individuals against unjustified invasions of their personal privacy. In deciding whether or not disclosure would result in an unjustified invasion of personal privacy under section 21(1), I must first determine if the records contain "personal information" and, if so, to whom it relates. Only personal information can be exempt under the personal privacy exemption at section 21(1).

[7] The definition of "personal information" is found in section 2(1) of the *Act* and refers to "recorded information about an identifiable individual," including, for example:

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

[8] The list of examples of personal information under section 2(1) is not exhaustive, however, and information that does not fall under paragraphs (a) to (h) may still qualify as personal information (Order 11). Sections 2(2) and (3) also relate to the definition of personal information. These sections state:

> (2) Personal information does not include information about an individual who has been dead for more than thirty years.
>
> (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.

[9] Generally speaking, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual.[3] 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.[4]

[10] In brief, the ministry submits that the affidavit and statement of marriage contain personal information relating to the bride and groom, the parents of those individuals, and the witnesses to the marriage. Specifically, the ministry argues that the place of birth, citizenship, racial origin and religious denomination all fit within paragraph (a) of the definition of personal information in section 2(1) of the *Act.* Further, the ministry submits that the birthplace of the father and mother of the bride and groom is the personal information of the bridal couple because it reveals their ethnic origin. In making this submission, the ministry acknowledges that:

> adopting the presumptions of prior orders from the IPC around life expectancy … the IPC would consider the parents to likely have been dead for thirty years.

[11] According to the ministry, the signatures and the addresses of the witnesses to the marriage are the personal information of those two individuals pursuant to paragraphs (a) and (d) of the definition in section 2(1).

[12] In seeking representations, I asked the ministry to address the exceptions to the personal information definition in light of the discussion in Order PO-2877 and past orders, as well as the specific information at issue. Regarding the exceptions, the ministry refers to the information that remains at issue following the revised decision and submits:

> As the records contain the personal information of a bride and groom who are deceased (in 2007 and 1996 respectively) … subsection 2(2) does not apply…
>
> The ministry also submits that while the information contained in the statement of marriage with respect to the person solemnizing the

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[3] Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.
[4] Orders P-1409, R-980015, PO-2225 and MO-2344.

> marriage is the individual's business information as per section 2(3) of the *Act*, [it] is also information that would reveal the religion of the bride and groom which is their personal information.

[13] In support of the statement immediately above, the ministry relies on Adjudicator Catherine Corban's finding to that effect in Order PO-2877.

[14] The appellant agrees that the information requested is "personal information" according to the definition of the term in section 2(1) of the *Act*. However, the appellant suggests that since it appears in documents pertaining to the deceased individual (the bride), the information about other individuals "is therefore information about the deceased."

[15] Based on my review of the information that remains at issue following the ministry's revised decision in this appeal, I am satisfied that all but one item qualifies as "personal information," according to the definition of that term in section 2(1) of the *Act.*

[16] With respect to the deceased individual who is the subject of the request and her groom, I find that the following information about them constitutes personal information under paragraphs (a) and (h) of the definition in section 2(1): place of birth, religious denomination, citizenship, racial origin and signatures.[5]

[17] Regarding the information related to the two witnesses to the marriage, I find that the statement of marriage contains personal information about them in the form of their names (signatures) and their addresses, which fit within paragraphs (d) and (h) of the personal information definition (see also Order PO-2877).

[18] The statement of marriage also contains information relating to the officiant who performed the marriage ceremony; i.e., his name, denomination and address. I accept the ministry's argument in this appeal that the disclosure of this information would reveal the religious denomination of both the bride and the groom, which (as stated above) qualifies as their "personal information" pursuant to paragraph (a) of the definition of that term in section 2(1) (see Order PO-2877).

[19] The exception to my finding that the information in the records qualifies as personal information relates to the birthplace of the parents of the bride and groom. Specifically, I reject the ministry's position that revealing their birthplace would also reveal the bridal couple's own birthplaces and thereby disclose personal information about them under paragraph (a) of the section 2(1) definition.

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[5] As noted, based on the copy of the records provided to this office with the revised decision, the ministry appears to have disclosed the signatures of the bridal couple where they appear in the affidavit, but not where they appear in the statement of marriage.

[20] As the ministry acknowledges, this office "would consider the parents to likely have been dead for thirty years," thus fitting the information about them within the exception to personal information in section 2(2) of the *Act*, as set out above. I understand this reference to refer to Order PO-2877 by Adjudicator Catherine Corban, where she reviewed and followed Adjudicator Donald Hale's approach in Order PO-2198, which was issued in 2003 to address 14 similar appeals. Adjudicator Hale's findings in Order PO-2198 were based on a review of Order PO-1886, where former Assistant Commissioner Tom Mitchinson reviewed "earlier decisions of this office in which certain assumptions about life expectancy were made to assist in establishing dates of death for individuals where this fact could not be determined from the records."[6] Indeed, applying the calculations used in these past orders, the bride and groom would have been born in 1925, their parents assumed to have been born in 1905 and to have died in 1978. Therefore, I agree with the ministry's acknowledgement that the parents of the deceased bridal couple would have been deceased for at least thirty years and that the information relating to them, therefore, would fit into section 2(2) of the *Act.*

[21] More recent orders of this office addressing this point (Orders PO-2877 and PO-2979) have generally adopted Adjudicator Donald Hale's approach in Order PO-2198. In addressing the ministry's position respecting the parents' information in several of those appeals, Adjudicator Hale stated (at page 2):

> Six of the appeals concern records that also contain information about the deceased person's parents. The Ministry argues that information relating to the parents also qualifies as the personal information of the deceased persons who are the subject of these requests and the subsequent appeals. In my view, the information relating to the parents qualifies as their personal information only. The records include, in some cases, the name and birthplace of the parent or parents of the deceased person. This is information about the parents only. I do not agree with the position taken by the Ministry that this information also qualifies as the personal information of the deceased persons and find that it relates solely to the parents.

[22] In my view, a similar approach is appropriate in this appeal, where the ministry maintains the position that the parents' birthplaces are also the personal information of the deceased bride and groom. I note that the ministry disclosed (in its revised decision) the names of the deceased bridal couple's parents. In my view, there is no reasonable basis for distinguishing between the names of the deceased bridal couple's parents and their birthplace for the purposes of disclosure. In the particular circumstances of this appeal, and notwithstanding the ministry's arguments to the

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[6] In Order PO-2198, Adjudicator Hale adopted the approach taken by the Assistant Commissioner in Order PO-1886, assuming a life expectancy for the parents of the deceased persons of 73 years and, also assuming that the parents were 20 years of age at the time the deceased persons were born.

contrary, I am not satisfied that disclosure of the birthplace of the bride and groom's parents would necessarily – or could reasonably be expected to – reveal personal information about the bride and groom.

[23] In the specific circumstances of this appeal, I find that the place of birth of the deceased bride and groom's parents does not qualify as personal information according to the definition of that term in section 2(1) of the *Act*. As only personal information can be withheld under section 21(1) of the *Act*, and no other exemptions are claimed with respect to the parents' place of birth, I will order the ministry to disclose this information where it appears on the statement of marriage.

[24] I will now consider whether the personal information is exempt under the personal privacy exemption in section 21(1).

B. WOULD DISCLOSURE RESULT IN AN UNJUSTIFIED INVASION OF ANOTHER INDIVIDUAL'S PERSONAL PRIVACY?

[25] 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.

[26] The appellant argues that section 21(1)(f) applies in 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).

[27] 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. 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.[7] 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 and the public interest override also does not apply.

[28] As suggested above, 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)*. 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). This list is not exhaustive and any circumstances that are

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

relevant must be considered by the institution, even if they are not listed under section 21(2) (Order P-99). As will be discussed later in this order, the ministry and the appellant both claim that listed factors and other unlisted factors apply.

[29] On my review of the representations of the ministry and the appellant, I note that they repeat arguments made and positions taken in past appeals that addressed similar circumstances, types of records and issues. Accordingly, although I have considered these submissions in their entirety, I will summarize them for the sake of brevity.

[30] Section 21(3)(h) states:

> A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information
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> > indicates the individual's racial or ethnic origin, sexual orientation or religious or political beliefs or associations

[31] In this appeal, the ministry claims that the presumption against disclosure in section 21(3)(h) applies to the birthplace, citizenship, racial origin and religious denomination appearing on the affidavit and statement of marriage because it is information about the ethnicity of the deceased individuals. The ministry relies on Orders PO-1923 and PO-2198 in support of this submission. Further, the ministry submits that the birthplace of the bride and groom's parents would also reveal the bride and groom's ethnic origin and would result in a presumed invasion of their personal privacy under section 21(3)(h).

[32] The ministry also submits that disclosing the personal information of the individual who solemnized the marriage would reveal the bride and groom's religious denomination, which constitutes a presumed unjustified invasion of their personal privacy under section 21(3)(h) of the *Act* (Order PO-2877).

[33] The appellant contends that the information relating to the birthplace of the deceased bride and groom does not determine their racial or ethnic origin. According to the appellant, it is relatively commonplace for people to move from country to country for reasons such as employment, so one's place of birth cannot, therefore, be taken as a straightforward indicator of one's racial or ethnic origin.

[34] There is now a consistent line of orders from this office addressing the application of section 21(3)(h) to the type of information for which the ministry claims exemption in this appeal.[8] In this appeal, both parties have relied on submissions also made in previous appeals, but to different effect. This reflects the fact that the decision

[8] Orders PO-1923, PO-1936, PO-2198, PO-2877 and PO-2979.

in any given appeal necessarily depends on the specific information at issue. For example, in this appeal, it is unnecessary for me to consider whether section 21(3)(h) applies to the birthplace of the parents of the bridal couple in light of my finding above that the information relating to them falls under section 2(2) of the *Act* and does not, therefore, qualify as personal information.

[35] With respect to the personal information at issue in this appeal, I find that the disclosure of the birthplace, religious denomination and racial origin of the deceased bride and groom would reveal their "ethnic origin" and fits within section 21(3)(h). Accordingly, the disclosure of this information is presumed to constitute an unjustified invasion of their personal privacy and is exempt.

[36] The exception to my finding about the application of section 21(3)(h) to the information about the deceased bride and groom relates to their citizenship. The ministry argues that disclosure of this information would also reveal the "ethnicity" of the couple. I disagree. In my view, which is based on review of the actual information relating to both deceased individuals, disclosure of their citizenship would not reveal information relating to their ethnicity. Accordingly, I find that section 21(3)(h) does not apply to the information contained in the records that describes the citizenship of the deceased bride and her groom.

[37] Furthermore, in the circumstances of this appeal, I am satisfied that disclosure of the signature, religious denomination and address of the individual who performed the marriage ceremony could reasonably be expected to reveal the religious denomination of the deceased bride and groom. Therefore, I find that this particular information contained in the statement of marriage also falls within the scope of the section 21(3)(h) presumption and that its disclosure is presumed to be an unjustified invasion of personal privacy.

[38] As stated previously, none of the exceptions in section 21(4) apply to this information and the public interest override is not applicable in this appeal. Therefore, I find that the disclosure of the birthplaces, religious denomination and racial origin of the deceased bride and groom, as well as the signature, religious denomination and address of the officiant, is presumed to be an unjustified invasion of the deceased bride and her groom's privacy. Accordingly, this information is exempt under section 21(1) of the *Act*.

[39] I will now determine whether the citizenship and signatures of the deceased bridal couple and the witnesses' signatures and addresses are exempt based on consideration of the factors in section 21(2) of the *Act*.

Section 21(2) factors – listed and unlisted

[40] 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. If no factors favouring disclosure apply to the information, section 21(1) prohibits disclosure of the information.

[41] Under the heading "Application of the Compelling Public Interest,"[9] the appellant claims that the factors favouring disclosure at sections 21(2)(a), (c) and (d) apply.[10] The ministry claims that the factors favouring non-disclosure at sections 21(2)(f) and (h) 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;
> >
> > (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
> >
> > (f) the personal information is highly sensitive;
> >
> > (h) the personal information has been supplied by the individual to whom the information relates in confidence;

[42] The list of factors under section 21(2) is not exhaustive. The ministry was required to also consider any circumstances that are relevant, even if they are not listed under section 21(2) (Order P-99).

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[9] As stated in the introductory section of this order, the ministry provided representations addressing the public interest override in section 23 even though the issue has not been raised by the appellant. Further, as I read the appellant's representations under this heading, they are directed at the application of the section 21(2) factors that weigh in favour of disclosure, rather than a claim that any such "public interest" would override the application of the mandatory personal privacy exemption in section 21(1).

[10] The appellant also takes the position that the factor favouring non-disclosure at section 21(2)(e) does not apply, perhaps because this factor has been raised in previous appeals. However, since the ministry did not rely on this factor in this appeal, I will not address its possible relevance in this order.

[43] In this appeal, as in previous appeals with the same parties, there are competing claims to the relevance of other unlisted considerations weighing both in favour of, and against, disclosure. Both parties address the following circumstances in their representations:

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

Section 21(2)(f) – highly sensitive

[44] The ministry submits that the information contained in the marriage statement "must be considered highly sensitive" for the purposes of section 21(2)(f) because "it pertains to detailed information about individuals," including the "personal information of witnesses where there is no information that would lead to a presumption of death." The ministry then refers to several orders where the section 21(2)(f) factor has been held to weigh in favour of non-disclosure, but these examples do not relate to the kind of information remaining at issue in this appeal. The ministry maintains that disclosure of the personal information would result in "excessive personal distress," citing Orders M-1053, P-1681 and PO-1736.

[45] The appellant submits that since society accords both legal and other rights and obligations consequent to the "highly public institution" of marriage, the disclosure of information pertaining to the marriage in this instance cannot "conceivably cause 'personal distress' to the deceased individuals."

[46] I note that the ministry refers to the test for this factor as being whether disclosure of the personal information would result in "excessive personal distress." Notably, however, Senior Adjudicator John Higgins' reasons in Order PO-2518, issued in October 2006, signalled a change in this office's approach to the factor:

> Throughout the Ministry's representations, it argues that the information at issue is highly sensitive. Previous orders have stated that, in order for personal information to be considered highly sensitive, it must be found that disclosure of the information could reasonably be expected to cause "excessive" personal distress to the subject individual [Orders M- 1053, PO-1681, PO-1736]. In my view, this interpretation is difficult to apply and a reasonable expectation of "significant" personal distress is a more appropriate threshold in assessing whether information qualifies as "highly sensitive."

[47] Accordingly, in order for personal information to be considered highly sensitive for the purposes of section 21(2)(f), I must be satisfied that disclosure of the

information could reasonably be expected to cause significant personal distress to the subject individual (Order PO-2518). It is not sufficient that release of the information might cause some level of embarrassment or discomfort to those affected (Order P-1117).

[48] Given the information in the records that actually remains at issue, I am not satisfied that it can be described as "highly sensitive" in the sense that its disclosure could reasonably be expected to result in significant personal distress to the individuals to whom it applies: the deceased bride and groom or the witnesses to their marriage. In view of my finding that there is nothing inherently sensitive about the information remaining at issue, I find that it does not warrant the application of the factor favouring non-disclosure in section 21(2)(f). As a result, I find that section 21(2)(f) does not apply.

Section 21(2)(h) and the unlisted factor of expectation of confidentiality

[49] With respect to section 21(2)(h), the ministry submits that the information at issue was supplied in confidence and is governed by the *Vital Statistics Act*. As it has done in past appeals, the ministry refers to the *Vital Statistics Act*, as a "confidentiality statute" and relies on sections 53(1) and 45(2), in particular.[11] The first provision states:

> 53(1) No division registrar, sub-registrar, funeral director, person employed in the service of Her Majesty or other prescribed person shall communicate or all 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. 2001, c. 21, s.11.

[50] The ministry sets out section 45(2) of the *Vital Statistics Act* which, under the heading "Who may obtain copy of registration of marriage" states:

> No certified copy of a registration of marriage shall be issued except to one of the parties to the marriage or to a person authorized by the Registrar General or the order of a court and upon payment of the required fee. R.S.O. 1990, c. V.4, s.45(2); 1998, c. 18, Sched. E, s. 300(2).

[51] The ministry submits that:

> Order P-309 held that section 21(2)(h) was a relevant consideration in an appeal relating to names, dates of birth and addresses of babies born in

[11] R.S.O. 1990, c. V.4, as am.

> Ontario that weighed against disclosure. The IPC held that due to section 45(1) of the *VSA*, individuals registering the required notice would reasonably expect that the information would remain confidential. The ministry submits that the same reasoning can be applied in the present appeal due to the fact that section 45(1) of the *VSA* contains the same language as [section] 45(2), the difference relating only to the records each subsection deals with.
>
> Therefore, given the statutory framework of the *VSA*, and the corresponding expectation of privacy of the individuals identified in the records, the ministry submits that the individuals supplying information do so in confidence.

[52] The ministry submits that the *VSA* provisions outlined above are also relevant in the consideration of the unlisted factor relating to an expectation of confidentiality. The ministry adds that section 2 of the *VSA* requires the safeguarding of information obtained under its provisions and submits that given the strong confidentiality protection given to the information at issue in this appeal by section 53(1), the individuals identified in the records have a reasonable expectation of privacy. Referring to *Cheskes v. Ontario (Attorney General)*,[12] the ministry submits that this case and others have established that the statutory framework in which records exist is an important factor. According to the ministry, therefore, the statutory framework of the *Vital Statistics Act,* combined with the nature of the information at issue, gives rise to a reasonable expectation of confidentiality that ought to be considered an important factor weighing against disclosure.

[53] In arguing that the factor in section 21(2)(h) should be attributed little weight, the appellant also relies on Order PO-1923, where "the IPC gave little weight to section 21(2)(h) because of the 'nature of the information and the need to use it in ways which would require disclosure …'." The appellant also seeks to distinguish Order P-309 from the circumstances of the present appeal. However, given my finding below, it is not necessary to set these submissions out in their entirety.

[54] The appellant's submissions relating to the relevance of the *Vital Statistics Act* in this appeal do not directly challenge the ministry's position respecting sections 53(1) and 45(2). Rather, the appellant's submissions suggest that because marriage is "by nature … a public institution … there can be no reasonable expectation of confidentiality in regards to the information relating to the marriage as outlined in the marriage registration."

[55] In Order PO-2497, I reviewed the possible application of the mandatory third party information exemption in section 17(1) to records describing formal arrangements

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[12] [2007] O.J. No. 3515.

between the Ministry of Health and Long-Term Care, the Ontario Medical Association and the Canadian Medical Protective Association for government reimbursement of professional liability insurance premiums paid by physicians.[13] The second part of the test for exemption under section 17(1) requires that the information have been supplied in confidence. With respect to section 17(1) and other exemptions requiring consideration of an expectation of confidentiality, this office has held that the expectation must be based on reasonable and objective grounds and that all the circumstances of the case must be considered. In Order PO-2497, the CMPA relied, in part, on the execution of a confidentiality and non-disclosure agreement to establish objective grounds for an expectation that the information at issue in that case would not be disclosed by the Ministry of Health and Long-Term Care. At page 40, I stated:

> … I do not accord significant weight to the CMPA's submission with regard to the effect of MPLC members executing a confidentiality and non-disclosure agreement on August 13, 2004. **It is the reasonableness of the expectation of confidentiality held by the parties at the time the 2004 MOU was signed that is relevant to my determination.** I am paraphrasing the appellant's submission on this point in saying that it is difficult to see how the August 2004 non-disclosure agreement has any bearing on a record generated before that date [emphasis added].

[56] The ministry has provided no evidence respecting the statutory framework in place at the time the information was provided by the individuals identified in the affidavit and statement of marriage. In my view, the finding from Order PO-2497 set out above is relevant in the circumstances of this appeal where the ministry is relying on a provision in a statute that was enacted many decades after the information at issue was collected.

[57] From my review, section 53(1) of the *Vital Statistics Act* first appeared in that statute in 1991. In my view, therefore, this particular provision does not assist the ministry in establishing that information collected at the time of the marriage in 1958 was either provided in confidence or that those providing it had a reasonable expectation that it would be held confidentially. Importantly, the circumstances of this appeal are distinguishable from those before former Assistant Commissioner Tom Mitchinson in Order P-309, where section 45(1) of the *Vital Statistics Act* (relating to restrictions on disclosure of birth registration information under that statute) was found to be a relevant consideration for the purpose of section 21(2)(h). In that appeal, the provision relied on by the institution was enacted in 1990, which pre-dated the request for "access to a list of the names, dates of birth and addresses of all babies born in Ontario in 1991."

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[13] Order PO-2497; upheld in *Canadian Medical Protective Association v. John Doe*, [2008] O.J. No. 3475 (Div. Ct.) at paras. 59-62.

[58] Moreover, I note that in Order PO-2877, Adjudicator Catherine Corban found the ministry's arguments respecting the *Vital Statistics Act* persuasive in relation to the name and address of an individual who provided information upon the death of another individual on the statement of death form. In that appeal too, the information on the statement of death was provided after the enactment of the provision relied on by the ministry in this appeal. In any event, Adjudicator Corban accorded the factor low weight because

> … 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.

[59] Furthermore, while Adjudicator Corban accepted that the *Vital Statistics Act* was relevant in her appeal, she disagreed

> … 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*.[14]

[60] I accept the argument that the statutory framework under which information is collected is important. However, on the facts of this appeal, it is difficult to see how a provision enacted in 1991 could have any bearing on information created and/or collected long before that date. Instead, I take the view that the reasonableness of an expectation of confidentiality must be ascertained by the circumstances existing at the time the information was provided. Accordingly, based on my analysis of this issue, I reject the ministry's submission that the confidentiality provision in the *Vital Statistics Act* provides a statutory basis that supports the application of the factor in section 21(2)(h) or the unlisted factor relating to a expectation of confidentiality as regards the information at issue here.[15]

[61] Further, I also find that the information remaining at issue – the citizenship of the deceased bridal couple, their signatures and the witnesses' signatures and addresses (as provided in 1958) – do not constitute a "biographical core of personal information," as contemplated by the Supreme Court of Canada in *Schreiber.*

[62] As stated, I am not persuaded that the *Vital Statistics Act* supports the position that there is a statutory basis for the application of section 21(2)(h) or the unlisted factor relating to a reasonable expectation of confidentiality. Accordingly, in the circumstances of this appeal, and based on the information remaining at issue, I find

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[14] *Schreiber v. Canada (Attorney General)*, [1998] S.C.J. No. 42.
[15] To the extent that this finding differs from the findings of Adjudicators Corban and DeVries in Orders PO-2877 and PO-2979, I respectfully decline to follow those orders.

that the ministry has not established that section 21(2)(h) and the unlisted factor relating to a reasonable expectation of confidentiality applies to this particular information.

Section 21(2)(a) - public scrutiny

[63] In order to support a finding that section 21(2)(a) applies as a factor weighing in favour of the disclosure of the personal information at issue, two requirements must be met by the evidence: first, that the activities of the institution have been called into question; and second, that the information sought will contribute materially to the scrutiny of those specific activities.

[64] The appellant's arguments respecting the possible application of this factor in the present appeal appear to be repetition of submissions that have been offered and rejected numerous times by this office. In Order PO-2877, Adjudicator Catherine Corban summarized this office's past treatment of these arguments in the following manner:

> 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.[16] … In Orders PO-1717 and PO-2260, this office specifically rejected the appellant's argument [also made in the present appeal] 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

[16] 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 addition, see also Order PO-2807.

> public scrutiny. As a result, I find that the factor favouring disclosure at section 21(2)(a) has no application in this appeal.

[65] I agree. I adopt this reasoning in the present appeal, and I find that the factor in section 21(2)(a) does not apply to favour the disclosure of the personal information at issue.

Section 21(2)(c) – informed consumer choice

[66] To make a finding that the factor in section 21(2)(c) is relevant, I must be satisfied that disclosure of the withheld personal information would "promote informed choice in the purchase of goods and services."

[67] The appellant submits that the section 21(2)(c) factor is a relevant consideration because it provides a competitive alternative to the ministry's services. The appellant suggests that this competition and the "necessary disclosure of information that is involved" could motivate the ministry to achieve greater efficiencies and accountability. The appellant provides an excerpt from the reasons of Senior Adjudicator David Goodis in Order PO-1790-R in support of this argument.[17] The remainder of the appellant's representations on section 21(2)(c) argue that greater competition through better information-sharing could result in the "orderly and efficient distribution of estates" and correspondingly "decrease the strain on public resources."

[68] As I do not view the appellant's arguments as being related to the promotion of "informed choice" on the part of the consumer, I did not describe them in their entirety. I also note that the appellant has offered similar arguments in a number of past, related appeals and that section 21(2)(c) has been found not to apply in this context.[18] In the circumstances of this appeal, I find that no meaningful correlation exists between the disclosure of the information remaining at issue and the promotion of "informed choice" in choosing heir tracing services for the purposes of section 21(2)(c). Accordingly, I find that this factor does not apply to weigh in favour of disclosure.

Section 21(2)(d) - fair determination of rights

[69] The appellant's submission that this factor favouring disclosure applies appears to be based on an assertion that the disclosure of the personal information at issue is "directly relevant to a determination of the rights of inheritance affecting those it represents." It is, in my view, important to emphasize that section 21(2)(d) provides for

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[17] I have not reproduced this quote because I understand the excerpt provided not to relate to this factor in any event, but rather to involve the former Senior Adjudicator's analysis of whether disclosure of the information would provide a benefit to unknown heirs, as an unlisted factor favouring disclosure. See page 9 of Order PO-1790-R.

[18] See Orders PO-2260, PO-2298 and PO-2877.

application of the factor when "the personal information is relevant to a fair determination of *rights affecting the person who made the request* [emphasis added]."

[70] In my view, this factor has no possible application in the circumstances of this appeal. For section 21(2)(d) to apply, I must be satisfied by the evidence that:

> (1) the right in question is a legal right which is drawn from the concepts of common law or statute law…; and
>
> (2) the right is related to a proceeding which is either existing or contemplated, not one which has already been completed; and
>
> (3) the personal information which the appellant is seeking access to has some bearing on or is significant to the determination of the right in question; and
>
> (4) the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing[19].

[71] The appellant has not provided me with sufficiently cogent evidence to establish any of the four requirements necessary for the application of this factor. Specifically, I have not been presented with evidence that any *legal* right *of the appellant's* is at issue; that any such right is connected with a proceeding (as that term has been defined in past orders addressing this factor); that the actual information at issue has some bearing on any identified legal right of the appellant's; and that disclosure of the personal information at issue is necessary for the purposes specified. Accordingly, I find that section 21(2)(d) does not apply to favour disclosure in this appeal.

Unlisted factor - diminished privacy interest after death

[72] The ministry submits that the unlisted factor of diminished privacy interest after death "must be applied with care" in view of the legislature's express intention to protect personal information for a period of 30 years after death, as evidenced by section 2(2) of the *Act*.[20] Citing Order P-1232, the ministry submits that where there is no evidence that the individual to whom the information relates is dead, such as the personal information of the witnesses to the marriage in this appeal, the factor cannot apply. Regarding the deceased bride and groom's information, the ministry submits that since they have only been deceased since 2007 and 1996 respectively, "the degree of

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[19] Order PO-1764; see also Order P-312, upheld on judicial review in *Ontario (Minister of Government Services) v. Ontario (Information and Privacy Commissioner)* (February 11, 1994), Toronto Doc. 839329 (Ont. Div. Ct.).

[20] The ministry relies on Order P-945 and (now) Senior Adjudicator John Higgins' statement that this particular unlisted factor should only apply in exceptional circumstances.

privacy applied to [their] personal information … is still sufficient," given the 30 year period specified in section 2(2).

[73] Responding to the ministry's arguments, the appellant refers to Orders PO-1717 and PO-1936 where former Assistant Commissioner Tom Mitchinson addressed the application of this factor where the individual whose privacy interests were under consideration was deceased. Relying on these orders, the appellant submits that the privacy rights of individuals identified in the records in this appeal are reduced in manner that roughly corresponds to the length of time they have been deceased. Regarding the individuals not known to be deceased, the appellant suggests that given that the wedding took place in 1958 and that the witnesses had to be adults at the time, "it is entirely possible" that they are dead and "may have been so for some time."[21]

[74] 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.[22] Based on my review of the reasoning in these orders and on the representations of the parties, I accept 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. In this appeal, the deceased bride and her groom are known to have been deceased since 2007 and 1996, or four and 15 years respectively. In these circumstances and given the personal information relating to the deceased bridal couple that remains at issue (their citizenship and signatures), I find that this unlisted factor in favour of disclosure applies and that it ought to be attributed moderate weight.

[75] However, regarding the personal information relating to the witnesses identified on the statement of marriage, I have been provided with no evidence that these individuals are deceased. In the absence of such evidence, I must assume that these individuals are still living.[23] As I have no evidence that the witnesses are deceased, I find that the unlisted factor of "diminished privacy interest after death," does not apply to their signatures and addresses.

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[21] Other submissions made by the appellant under this heading challenge the characterization of the information relating to the witnesses as "personal information." As I have already made a finding that the information qualifies as their personal information, these additional representations are not addressed further.

[22] Order PO-1736 [upheld on judicial review in *Ontario (Public Guardian and Trustee) v. Goodis*, cited above (footnote 15)]; and Orders PO-1936, PO-2260, PO-2623, PO-2877 and PO-2979.

[23] See Orders P-1232 and PO-2877.

Unlisted factor - identity theft

[76] The ministry's representations on this unlisted factor consist of only two paragraphs, including the submission that:

> … 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 re-directed.

[77] On this basis, the ministry maintains that it is a factor "that still warrants consideration in the current appeal," notwithstanding the analysis of the issue in Order PO-2877, which I drew to the ministry's attention in seeking its representations.

[78] The appellant submits:

> In Order PO-2198, the IPC discussed the issue of identity theft in regards 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 cases before us is largely similar to that being considered in Order PO-2198.

[79] I agree. I also agree with the following additional reference provided by the appellant from Adjudicator Catherine Corban's findings on this unlisted factor in Order PO-2877 (at pages 25 & 26):

> 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. …
>
> 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 …

[80] In addition, Adjudicator Corban stated:

> … 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.

[81] In the current appeal, based on the nature and the age of the information remaining at issue, I find that the unlisted factor of identity theft is not a relevant consideration with respect to the citizenship and signatures of the deceased bride and her groom. In my view, this particular information would be of no use to someone attempting to commit identity theft. Regarding the signatures and addresses of the witnesses, I adopt Adjudicator Corban's approach in Order PO-2877. The information at issue here was provided in 1958 and, in my view, the passage of time has lessened both its sensitivity and the likelihood of the continuing accuracy of the addresses. Accordingly, I find that the unlisted factor applies to the witnesses' personal information, but that it should be attributed very low weight.

Unlisted factor - benefit to unknown heirs

[82] The ministry submits that "there is no benefit to unknown heirs" in the present appeal because the Public Guardian and Trustee has identified beneficiaries to the deceased bride's estate. Additionally,

> [t]he ministry submits that the fact that there is no benefit to unknown heirs is significant. Further, the ministry is withholding only the personal information that is subject to the presumed invasion of privacy in accordance with the *Act* and the personal information of witnesses.
>
> The ministry submits that no weight should be provided to the unlisted factor in the present appeal.

[83] The appellant submits that even if one or more potential heirs have been identified, this does not guarantee that all of the heirs have been identified, nor does it establish that their entitlement to the deceased bride's estate has been verified. The appellant refers to the findings in past orders that in such circumstances, the unlisted factor of benefit to unknown heirs has been found to be relevant.[24]

[84] As the appellant notes, this office has reviewed the possible application of this unlisted factor on many occasions with these same parties. I agree with the appellant that this office has found that "benefit to unknown heirs" is a relevant consideration weighing in favour of disclosure of the information. These orders have also established

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[24] The appellant lists Orders P-1493, PO-1717, PO-1736, PO-1923, PO-2012R, PO-2240, PO-2260, PO-2298, and P0-2877.

that the weight that should be attributed to this circumstance is fact-specific and highly dependent on the particular circumstances of each appeal (see Order PO-2240).

[85] The ministry argues that there is no benefit to unknown heirs because the Public Guardian and Trustee has identified heirs. However, I note that this position has been rejected by this office in several orders.[25] In Order PO-2807, Adjudicator Jennifer James addressed the argument in the following manner:

> … Finally, I considered the OPGT's evidence that the possible application of this factor in this appeal is moot on the basis that it may have located the deceased's next-of-kin. Not only has the OPGT failed to substantiate this claim, it also failed to demonstrate how it is relevant in the circumstances of this appeal. In my view, evidence that the OPGT may have located one of the deceased's next-of-kin, does not demonstrate that all of the rightful heirs have been located or that disclosure of the personal information at issue would not result in a benefit to an unknown heir. … Having regard to the above, I am satisfied that disclosure of the information at issue might result in individuals successfully proving their entitlement to assets of the estate, and thus is a relevant factor in the circumstances of this appeal.

[86] I agree. Considering the particular information that remains at issue in the records, I am satisfied that the disclosure of some of it could reasonably be expected to assist the appellant in locating individuals who are entitled to the assets of the deceased's estate. However, I also agree with the principle articulated in past orders that the weight to be accorded this factor depends on the importance of a particular item of personal information in assisting in the identification of potential heirs.[26] In my view, the personal information remaining at issue in the affidavit (the citizenship and signatures of the deceased bride and her (deceased) groom), are not likely to greatly assist in this regard. Indeed, as noted previously in this order, the ministry appears to have disclosed the deceased bridal couple's signatures where they appeared on the affidavit, if not on the statement of marriage. Accordingly, I find that this unlisted factor favouring disclosure ought to be accorded low weight with respect to the signatures and the citizenship of the deceased bridal couple.

[87] As for the witnesses' signatures and addresses in the statement of marriage, I note that because these are addresses where the witnesses resided over 50 years ago, they may be less likely to assist the appellant in locating the deceased's next of kin. However, as Adjudicator James noted in Order PO-2807, "personal information, including the names, about individuals who may have a family connection with the deceased could reasonably be expected to assist in the identification of potential heirs." Due to the specific nature of the withheld personal information of the witnesses to the

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[25] See Orders PO-2807 and PO-2979.

[26] Orders PO-2198 and PO-2807.

marriage, I find that this unlisted factor weighs moderately in favour of disclosure of the remaining information on the statement of marriage because its disclosure could help locate potential heirs.

Balancing of the section 21(2) factors

[88] Having considered the personal information remaining at issue, the representations of the parties and previous decisions issued by this office, I have concluded that the factors in sections 21(2)(a), (c) and (d) favouring disclosure, and sections 21(2)(f) and (h) favouring non-disclosure, do not apply in the circumstances of this appeal.

[89] I have reached the following conclusions with respect to the application of, and weight to be attributed to, the unlisted factors identified by the ministry and the appellant:

- Reasonable expectation of confidentiality (favours non-disclosure) – this factor does not apply to the personal information at issue;
- Diminished privacy interest after death (favours disclosure) – this factor applies to the citizenship and signatures of the deceased bride and her groom and weighs moderately in favour of disclosure; however, the factor does not apply to the witnesses' signatures and addresses;
- Identity theft (favours non-disclosure) – this factor does not apply to the personal information about the deceased bride and her groom; the factor applies to the personal information relating to the witnesses, but should be accorded very low weight; and
- Benefit to unknown heirs (favours disclosure) – this factor applies to all of the personal information remaining at issue; it carries low weight respecting the citizenship and signatures of the deceased bride and her groom and moderate weight with regard to the witnesses' signatures and addresses.

[90] Based on the balancing of the factors listed above, I find that the disclosure of the personal information remaining at issue – the citizenship and signatures of the deceased bride, the same information about the deceased groom, and the witnesses' signatures and addresses – would not constitute an unjustified invasion of the privacy of those individuals for the purposes of section 21(1) of the *Act*. Accordingly, I will order the ministry to disclose this information to the appellant.

ORDER:

1. I order the ministry to disclose the portions of the records that are not exempt under the *Act* by **November 3, 2011** but not before **October 27, 2011**.

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 ______________________ September 28, 2011
Daphne Loukidelis
Adjudicator