



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

# **ORDER PO-2979**

**Appeal PA08-327**

**Ministry of Government Services**



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## **NATURE OF THE APPEAL:**

The Ministry of Government Services (the Ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) from a commercial heir tracing company for access to the 1944 marriage registration for a named deceased individual.

In response, the Ministry provided access to the record, in part. Access to the withheld portions of the marriage certificate was denied based on the mandatory personal privacy exemption in section 21(1) of the *Act*. The appellant appealed that decision.

During mediation, the Ministry confirmed that before it made its access decision, it had contacted the Office of the Public Guardian and Trustee (OPGT) to clarify if the OPGT was the estate trustee for the named individual. The OPGT confirmed that it was the estate trustee for the named individual, but that it had not yet located heirs of the estate.

Also during mediation, the parties agreed to place this file on hold pending the conclusion of two appeals in this office dealing with similar issues, and which also involved the Ministry and the appellant. Those two appeals were resolved by Orders PO-2876 and PO-2877. When those orders were issued, this file was reactivated, and the mediation process continued.

The Ministry subsequently decided to disclose additional portions of the record to the appellant, and issued a revised decision, disclosing additional portions of the record. Upon receipt of the revised decision, the appellant's representative indicated that she wished to continue with this appeal.

Mediation did not resolve the remaining issues, and this file was transferred to the inquiry stage of the process, where an adjudicator conducts an inquiry under the *Act*. I decided to send a Notice of Inquiry, identifying the facts and issues in this appeal to the Ministry, initially. The Ministry provided representations to me. I then sent the Notice of Inquiry, along with a severed copy of the representations of the Ministry, to the appellant. The appellant also provided representations in response. On my review of the appellant's representations, I decided that they raised issues to which the Ministry ought to be given an opportunity to respond to. Accordingly, I sent a copy of the appellant's representations to the Ministry, and invited the Ministry to provide reply representations, which it did.

During the inquiry process, I also invited the parties to address the issues in light of the findings in Orders PO-2876 and PO-2877. Furthermore, in its representations, the Ministry indicated that the OPGT has confirmed that it is now in contact with the deceased's next of kin.

## **RECORD:**

The record at issue is a one-page photocopy of a marriage registration, which includes a copy of the Certificate of Marriage.

The withheld portions of the record include the following:

Information about the deceased groom:

- place of birth
- religious denomination

Information about the bride:

- name
- age
- residence when married
- place of birth
- marital status
- occupation
- religious denomination
- parents' names
- literacy level

Information about other individuals:

- witnesses' signatures and addresses
- signature, religious denomination and address of the place of worship of the officiant who solemnized the marriage

## **DISCUSSION:**

### **PERSONAL INFORMATION**

In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains "personal information" and, if so, to whom it relates. That term is defined in section 2(1), in part, as follows:

"personal information" means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,

- (d) the address, telephone number, fingerprints or blood type of the individual,
- (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

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

Sections 2(2), (3) and (4) 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.
- (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 [Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225].

Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual [Orders P-1409, R-980015, PO-2225 and MO-2344].

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

## **Representations**

The Ministry submits that the information remaining at issue constitutes "personal information" as it is recorded information about an identifiable individual, falling within the definition of personal information in section 2(1) of the *Act*. The Ministry states:

... the place of birth and religious denomination of the bride and groom relates to national or ethnic origin, the type of information enumerated in the definition of personal information in subsection 2(1)(a). Further, as per subsection 2(1)(a), the religious denomination also qualifies as personal information.

The IPC has considered whether the type of information in a statement of marriage constitutes personal information [PO-2877]. In Order PO-2877, the IPC held that personal information was at issue in a statement of marriage and a statement of death. Specifically, the IPC held that the statement of marriage and the statement of death contained the deceased's name, together with information such as her national and ethnic origin, religion, age, sex and marital or family status.

As the record [at issue in this appeal] contains the personal information of a groom who died in 2007, the Ministry submits that subsection 2(2) does not apply, as the individual has not been deceased for the requisite 30 years in order for his information to no longer be considered personal under the *Act*. Further, the Ministry has no evidence that the bride is even deceased. Instead, the last information known to the Ministry ... is that the bride is alive.

The Ministry submits that the [*Vital Statistics Act* (the VSA)] clearly indicates that information contained in a marriage registration is not publicly available. In fact, the information is to be maintained in the strictest confidence and only disclosed to authorized persons as prescribed by the VSA.

The Ministry also submits that while the information contained in the statement of marriage with respect to the person solemnizing the marriage is the individual's business information as per subsection 2(3) of the *Act*, it is also information that would reveal the religion of both the groom and the bride which is their personal information.

Order PO-2877 dealt with information in a statement of marriage relating to a clergy person who performed the marriage service (his name, denomination and address of the church). The IPC held that revealing the clergy person's name, denomination and church address would reveal the religious denomination of both the deceased and the groom, which qualified as their "personal information" pursuant to paragraph (a) of the section 2(1) definition of that term. Therefore, the IPC held that the information should not be disclosed as it was presumed to constitute an unjustified invasion of personal privacy.

The Ministry also takes the position that the names of the father and mother of the bride contained in the marriage registration are their personal information. The Ministry states that it has no information as to the birthdates of the parents, nor does it have confirmation that they are deceased. The Ministry then provides confidential information about the possible birthdates of the parents of the bride, and reviews the age estimates set out in other orders, which identified certain assumptions which could be made in circumstances where it is unknown whether an

individual has been deceased for over 30 years. The Ministry then states that it cannot confirm that the parents of the bride have been deceased for thirty years, and that section 2(2) of the *Act* therefore applies to their names.

Lastly, with respect to the names and addresses of the witnesses, the Ministry states:

The registration of marriage contains the names and addresses of witnesses to the marriage.

The Ministry submits that the name along with the addresses of the witnesses constitutes their personal information as outlined in subsection [2(d)] of the *Act*.

The IPC held in Order PO-2877 that the statement of marriage contained the personal information of two individuals who [witnessed] the marriage. In particular, the statement of marriage contained the witness names together with their addresses (paragraph (d)), which qualifies as personal information within the meaning of the *Act*.

The appellant agrees that the much of the information requested is “personal information” within the meaning of the section 2(1) of the *Act*. However, the appellant’s representative argues that the information contained in the refused document is information pertaining to the deceased individual. She goes on to submit that even where the information contains the names of other individuals, it is in the context of the individuals’ relation to the deceased, and is, therefore, information about the deceased.

The appellant’s representative also takes issue with the Ministry’s assertion that certain portions of the record contain “personal information.”

With respect to the identity of the officiant, the appellant maintains that this is not “personal information” as it identifies the officiant in a business, professional or official capacity, as per section 2(3) of the *Act*. The appellant refers to section 2(3), set out above, and then states:

Contrary to the Ministry’s assertion that Order PO-2877 determined that disclosing the clergy person’s information would reveal the religion of the marital parties, Order PO-2877 determined that disclosing “his name, denomination and address of his church” would reveal the parties’ religion. Disclosing the officiant’s name would not reveal the religion of the bride and groom. There is nothing intrinsic to a name that announces the person’s religion. Disclosing the “denomination” of the church, and possibly also the “address” of the church may disclose the religion.

The appellant also takes issue with the Ministry’s position that information about the bride’s parents is “personal information.” The appellant states:

Although the bride’s parents’ dates of birth were not given, when an individual’s date of death is unknown, previous orders from the Information and Privacy

Commissioner of Ontario (the "IPC") have determined that it may be assumed that a person born in 1920 or earlier would have been expected to live approximately 60 years.

The appellant then refers to Order PO-2877, in which Adjudicator Corban applied the reasoning found in previous orders that, based on information from Statistics Canada, individuals born prior to 1920 had a life expectancy of either 59 years (for males) or 61 years (for females). On that basis, Order PO-2877 determined that the names of the parents of the deceased no longer qualified as "personal information" based on section 2(2) of the *Act*.

In its reply representations, the Ministry affirms the position it took in its previous representations.

In response to the appellant's position that the name of the officiant could be disclosed, the Ministry states:

The Ministry disagrees with the appellant's suggestion that the name alone will not reveal any religious denomination. A name ... could very well reveal, and/or provide a mechanism to search for, the religion of the bride and groom.

Further, Order PO-2877 could have ordered that just the name [of the officiant] be disclosed however it did not because this information would reveal the religious denomination of the bride and groom in the record.

With respect to the names of the bride's parents, the Ministry provides significant additional information in support of its position that it is likely that these individuals have not been deceased for a period of thirty years or more. Because of my decision below, it is not necessary to review this additional information in detail.

### **Analysis and findings**

I have carefully reviewed the information remaining at issue in this appeal, and find that all of the remaining information qualifies as personal information for the purpose of section 2(1) of the *Act*.

To begin, I find that much of the information remaining at issue qualifies as the personal information of the bride of the deceased. In my view, the bride's age, religious denomination and marital status (prior to the wedding) clearly fit within paragraph (a) of the definition of personal information. I am also satisfied that revealing the bride's place of birth would reveal her national origin under paragraph (a) of the definition. In addition, I find that the bride's name, residence when married, occupation and literacy level qualify as her personal information under paragraphs (b) and/or (h) of the definition in section 2(1) of the *Act*.

Furthermore, in the unique circumstances of this appeal, I am satisfied that names of the bride's parents qualify as the personal information of the bride, because it is reasonable to expect the bride may be identified if the names of her parents are disclosed [see Order PO-1880, upheld on

judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.)). I accept that previous orders have established that a deceased individual's parent's name does not constitute the personal information of the deceased, but only the personal information of the parent (Orders PO-2198, PO-2877). In those situations, however, it appears that the names of the deceased individuals were known to the requester. Accordingly, in those circumstances, the names of the parents were found to be solely the parents' personal information. However, in the circumstances of this appeal, where the name of the bride is at issue and where there is no evidence that the bride is deceased, I am satisfied that it is reasonable to expect the bride may be identified if the names of her parents are disclosed. I also make this finding based on the specific names of the parents, as well as on the information in the record that has already been disclosed.

I also find that some information remaining at issue is the personal information of the deceased. In particular, the deceased's place of birth and religious denomination qualify as his personal information under paragraph (a) of the definition in section 2(1). As well, I find that some of the information about the bride (for example, her name) could also be considered to be personal information about the deceased, as it is in the context of her relationship to the deceased, and qualifies as his personal information under paragraph (h) of the definition.

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

Lastly, with respect to the information in the statement of marriage relating to the officiant who performed the service (in particular, his name, denomination and address of the place of worship), I follow the determinations made in Order PO-2877, and find that revealing this information would reveal the religious denomination of both the deceased and the bride, which qualifies as their "personal information" pursuant to paragraph (a) of the section 2(1) definition of that term.

In summary, I have found that all of the information remaining at issue contains the personal information of either the deceased, the bride or the two witnesses. Because of my findings set out below, it is not necessary for me to determine whether or not the names of the bride's parents are also the personal information of those individuals.

I will now determine whether the personal information at issue is exempt pursuant to the mandatory exemption under section 21(1).

## **PERSONAL PRIVACY**

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

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



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

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

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

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

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

### **Section 21(3) presumptions**

The Ministry takes the position that information about birthplace and religious denomination fit within the presumption in section 21(3)(h), which reads:

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

indicates the individual’s racial or ethnic origin, sexual orientation or religious or political beliefs or associations.

The Ministry states:

... information about the birthplace of the groom (deceased) and the bride (who is not known to be deceased) appearing on the marriage registration is information about these individuals’ ethnicity. The IPC has found that “information concerning the deceased’s birthplace and the birthplace of his parents indicates their ‘ethnic origins’ and therefore falls within the scope of section 21(3)(h).” [PO-1923; PO-2198]

... the birthplace and religious information appearing on the marriage registration falls squarely within the presumption in subsection 21(3)(h). Therefore, disclosure of this personal information is presumed to constitute an unjustified invasion of the personal privacy of the deceased individuals.

The Ministry also submits that the information about the individual who solemnized the marriage would reveal the bride and groom's religious denomination.

Order PO-2877 followed previous orders issued by the IPC that found that information concerning an individual's birthplace can indicate their "ethnic origins" and fell within the scope of section 21(3)(h) [Orders PO-1923; PO-1936]. In Order PO-2877, the IPC was also satisfied that information describing the birthplace and ethnic origin of the deceased and the groom, as well as their religious denomination, fell within the section 21(3)(h) presumption. The IPC further held that disclosure of the signature, church address and religious denomination of the clergy person could reasonably be expected to reveal the religious denomination of the deceased and the groom and accordingly also falls within the section 21(3)(h) presumption. Therefore, disclosure of this information was presumed to be an unjustified invasion of personal privacy of the individuals to whom it related.

The appellant takes the position that this information does not fit within the presumption in section 21(3)(h), and states:

[The] place of birth of the deceased and his spouse ... is not indicative of the individual's racial or ethnic origin. Individuals and families frequently move homes, countries and even continents. Many westerners from Europe and North America have moved across the globe to work in such roles as missionaries or researchers, and have had children in Asia and Africa and elsewhere. Likewise many Canadian families have lived in Canada for generations, while their racial or ethnic origins stem from across the globe. Therefore knowing a person's place of birth is not necessarily indicative of racial or ethnic origin.

Birthplace information about the deceased is important and helpful in recreating the family history and relationships in order to settle the deceased's estate. It is hardly indicative of the racial or ethnic origins of an individual.

As stated above, disclosing the officiant's name, and possibly also the address where the marriage took place, is not necessarily disclosing the religion of the parties.

In reply, the Ministry refers to its earlier representations which identify that previous orders have found that birthplace information is information about the individual's ethnicity.

## ***Findings***

### ***Birthplace***

On my review of the birthplace information relating to both the deceased and the bride, I find that this information does not describe either the racial or ethnic origins of these two individuals. Although I accept the Ministry's position that previous orders have found that information concerning an individual's birthplace can indicate their "ethnic origins" and can fall within the scope of section 21(3)(h) (Orders PO-1923, PO-1936 and PO-2877), on my review of the specific birthplace information at issue in this appeal, because of the nature of that information, I find that it does not fall within the section 21(3)(h) presumption.

### ***Religious denomination***

With respect to the information in the records relating to the religious denomination of the bride and the deceased groom, I am satisfied that this information, including the name, religious denomination and address of the place of worship of the officiant, identifies the religious beliefs or associations of the deceased and the bride, and accordingly falls within the section 21(3)(h) presumption. I find, therefore, that disclosure of this information is presumed to be an unjustified invasion of personal privacy of the deceased and the bride. As none of the exceptions in section 21(4) apply to this information and the public interest override is not applicable in this appeal, I find that its disclosure is presumed to be an unjustified invasion of the privacy of the deceased groom and the bride, and the information is exempt pursuant to section 21(1) of the *Act*.

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

### **Section 21(2)**

As noted above, section 21(2) of the *Act* lists factors to be considered when determining whether the disclosure of personal information constitutes an unjustified invasion of personal privacy. If no factors favouring disclosure apply to the information, section 21(1) prohibits disclosure of the information.

The appellant takes the position that two unlisted factors favouring disclosure apply to the information at issue. These two factors are 1) the benefit to unknown heirs, and 2) the diminished privacy interest after death.

The Ministry takes the position that the unlisted factors referred to by the appellant do not apply to much of the information at issue. In addition, the Ministry argues that a number of factors favouring non-disclosure apply, including 1) the personal information is highly sensitive [section 21(2)(f)]; 2) the information was supplied in confidence [section 21(2)(h)]; 3) the unlisted factor of the expectation of confidentiality and; 4) the unlisted factor of identity theft.

***Benefit to unknown heirs***

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

The circumstances of this appeal are quite unique. In the first place, the record at issue is a marriage certificate involving the deceased groom and his bride, who is not known to be deceased. Furthermore, the Ministry has indicated in its representations that the OPGT has confirmed that they are in contact with the deceased’s next of kin.

The appellant addresses this issue in its representations when it states:

The Ministry states that [the OPGT] has identified, and is in contact with, the deceased’s next of kin. [The appellant] ... submits that even if one or more potential heirs have been identified, this does not guarantee that all the heirs have been identified and their entitlement verified. Therefore “benefit to unknown heirs” still applies in the present circumstance.

In its reply representations the Ministry states:

The [OPGT] has advised that they are in contact with the family and in the process of determining heirship....

The Ministry also refers to the previous orders that have established that the weight that should be attributed to this circumstance is fact-specific and highly dependent on the particular circumstances of each appeal, and states that this unlisted factor should not be given any further weight in this appeal.

On my review of the record and representations in this appeal, I find that the factor of “benefit to unknown heirs” does not apply to the information remaining at issue. I make this finding primarily on the basis of the record at issue (a marriage certificate involving a bride who is not known to be deceased), and on the fact that the Ministry has indicated that the OPGT has identified and is in contact with the next of kin and the family. I accept that there may be special situations where this unlisted factor could apply in situations where an heir has been or may have been located (see, for example, Order PO-2807); however, in the circumstances of this appeal, I have not been provided with sufficient evidence to satisfy me that the unlisted factor of “benefit to unknown heirs” applies.

***Diminished privacy interest after death***

The appellant takes the position that the unlisted factor of “diminished privacy interest after death” should apply to the information at issue in this appeal.

The Ministry's representations on this unlisted factor state:

The Ministry submits that the fact that an individual who is deceased (who was the subject of the access request) may have been related to another individual does not mean that the diminished privacy after death principle applies to the individuals whose information is contained in the registration of marriage merely by virtue of the fact that they may be related to a deceased individual. In other words, the diminished privacy interest after death principle applies to the personal information of the deceased only. It does not apply to others who may be associated with the deceased who may still be alive.

With respect to the marriage registration, there is no evidence indicating that the bride or the witnesses identified within have in fact died. Given this, the Ministry submits that the unlisted factor of diminished privacy interest after death should be given no weight when applied to the personal information of the witnesses identified in the marriage registration....

Lastly; the groom in the marriage registration has only been deceased since 2007. The intent of the *Act* is that these individuals continue to have a degree of privacy until the 30-year mark. The Ministry submits that the degree of privacy applied to the personal information of the groom is still sufficient, given the presumed invasion of privacy criteria set out in the *Act*, where a disclosure will be an unjustified invasion of personal privacy.

The appellant states:

In the present case, [the appellant] is requesting the disclosure of information that is not highly sensitive and in circumstances where, it has been consistently held, there is a reduction in the privacy interests of the deceased individual. ...

The Ministry submits that the diminished expectation of privacy extends only to the deceased, and not to other individuals whose information is included in the marriage statement and affidavit. [The appellant] is interested in this information only insofar as it relates to the deceased, and for no other purpose, and submits therefore that it is information about the deceased. If the officiant and witnesses are not related to the deceased, then their information is not relevant to [the appellant's] search for heirs.

In its reply representations, the Ministry states:

The Ministry disagrees with the appellant's assertion that the information about all individuals contained in the marriage certificate is information about the deceased... The personal information contained in the certificate of marriage at issue in the current appeal is that of the deceased, the bride, ... and the witnesses. The Ministry highlights the fact that the groom is the only one confirmed to be

deceased out of those with personal information contained in the record at issue, and he has only been deceased since 2007.

Previous orders issued by this office have considered “diminished privacy interest after death” as a circumstance weighing in favour of disclosure, and where more than one year has passed since the date of death it has been found that this should be attributed moderate weight [See for example: Order PO-1736 (upheld on judicial review in *Ontario (Public Guardian and Trustee) v. Goodis* (December 13, 2001), Toronto Doc. 490/00 (Ont. Div. Ct.), leave to appeal refused (March 21, 2002), Doc. M28110 (C.A.)), and Orders PO-1936, PO-2240, PO-2260, PO-2298 and PO-2623]. In Order PO-2260, I reviewed the approach taken by former Assistant Commissioner Tom Mitchinson in Order PO-2240, and stated:

I accept the approach taken by Assistant Commissioner Mitchinson in applying the unlisted factor of a “diminished privacy interest after death.” As established in Order PO-2240, I do not attribute any significant weight to this unlisted factor for at least the first year following death.

However, after one year following the date of death, I find that this factor is to be attributed weight of some significance. In Order PO-1736 (upheld by the Divisional Court), Senior Adjudicator Goodis had to decide whether this factor applied where, at the time of the request, the deceased individual had been dead for approximately two years. He found that the factor of “diminished privacy interest after death” did apply, although he decided that the privacy interests of the deceased individuals were “moderately reduced” in those circumstances.

Based on the previous orders of this office, and on the representations of the parties, it is my view that the unlisted factor of a “diminished privacy interest after death” is a factor that applies upon the death of the individual to whom the information relates. However, I find that it is not to be attributed any significant weight for the first year following death, but that after that time, it should be accorded moderate weight.

I adopt the approach I took to this issue in Order PO-2260, and apply it to the circumstances of this appeal.

However, to the extent that any of the information relating to the deceased is also the personal information of other individuals who are not deceased, I agree with the Ministry that this factor does not apply to diminish the privacy interests of these other individuals. Although the unlisted factor of “diminished privacy interest after death” is a factor favouring disclosure of the *deceased’s* personal information because his privacy interests are diminished, I find that it does not apply to the personal information of other, living individuals, as their privacy interests are not diminished.

Applying this approach to the information remaining at issue in this appeal, I find that this factor has moderate weight for the remaining information that is solely the personal information of the deceased (in this case, the deceased’s birthplace). I find that it has no weight for the other

personal information remaining at issue, as that information is primarily the personal information of other named individuals who are not known to be deceased.

In summary, I have found that the factor of “diminished privacy interest after death” is a factor favouring disclosure of the deceased’s birthplace, but that no factors favouring disclosure apply to the other information in the record. Accordingly, in these circumstances and in the absence of any factors favouring disclosure, I find that all of the information remaining at issue, except for the birthplace of the deceased, qualifies for exemption under section 21(1) of the *Act*.

I will now review whether any factors favouring non-disclosure apply to the birthplace of the deceased.

### ***Reasonable expectation of confidentiality***

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

The Ministry further submits:

[T]he fact that the Legislature afforded a high level of privacy protection to the information governed by the VSA and at issue in this appeal is a significant factor indicating that disclosure of the information would constitute an unjustified invasion of personal privacy.

Jurisprudence on the “reasonable expectation of privacy” has indicated that the statutory framework upon which records exist is an important factor. It is respectfully submitted that the statutory framework of the VSA, combined with the nature of the information in the records at issue, gives rise to a reasonable expectation of confidentiality.

Given the statutory framework of the VSA, and the corresponding expectation of privacy of the individuals identified in the records, it is submitted that the factor of expectation of confidentiality must be considered as an important factor against disclosure of the information at issue.

The appellant submits:

[T]here is no reasonable expectation of confidentiality in regards to the information requested. It would be reasonably expected that information provided in a marriage registration would be used in relation to the relationship of

the individuals. One such activity is the settling of the estate of one or both of the marriage partners. This is the precise reason for [the appellant's] request, that the unknown heirs be found and the estate settled.

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

In its reply representations, the Ministry indicates that it does not agree with the appellant's characterization of the issue, and states:

The issue in the current appeal is the personal information contained within the marriage certificate. For the reasons outlined in its previous submissions, there is an expectation of the confidentiality in regards to the information supplied in a certificate of marriage.

#### *Analysis and finding*

I have carefully considered the representations of the parties on this issue. I note that similar representations were made to Adjudicator Corban in Order PO-2877. In that order, in which the records consisted on both a statement of marriage and a statement of death, Adjudicator Corban stated:

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

... Given the nature of the information and the fact that disclosure of the information would be for purposes connected to the death of the individual to whom the statement relates, in particular, the administration of her estate, I find that this unlisted factor carries low weight in these circumstances. Accordingly, in my view, the unlisted factor, reasonable expectation of confidentiality, carries low weight in favour of non-disclosure of all of the information at issue.

Adopting the approach taken by Adjudicator Corban, I accept the Ministry's position that, based on the provisions of the VSA, there is a reasonable expectation that personal information



provided on a statement of marriage would be kept confidential. However, unlike the situation in Order PO-2877, there is no issue regarding the administration of the estate in the circumstances of this appeal. In its arguments on why this factor ought not to apply, the appellant has stated that the “precise reason” for the appellant’s request is that “unknown heirs be found and the estate settled.” However, as indicated above, the OPGT has identified and is in contact with the next of kin and the family. In these circumstances, I accept that the unlisted factor of “reasonable expectation of confidentiality” applies, and I accord this factor some moderate weight.

Because of the manner in which I balance the two factors referred to above, there is no need for me to determine whether the other factors favouring non-disclosure identified by the Ministry apply to the information regarding the birthplace of the deceased.

***Balancing of factors***

I have found that the only factor favouring disclosure of the birthplace of the deceased is the unlisted factor of “diminished privacy interest after death.” I have also found that the unlisted factor favouring non-disclosure of “reasonable expectation of confidentiality” applies to the birthplace of the deceased. In the circumstances of this appeal, I find that these two factors offset one another and that, in the absence of other factors favouring disclosure, section 21(1) applies to the birthplace of the deceased.

In summary, I find that the personal information remaining at issue in this appeal qualifies for exemption under section 21(1).

**ORDER:**

I uphold the Ministry’s decision, and dismiss this appeal.

Original Signed by: \_\_\_\_\_  
Frank DeVries  
Adjudicator

\_\_\_\_\_ June 24, 2011