

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-3143

Appeal PA12-41

Ministry of Government Services

November 29, 2012

Summary: The ministry received a request for information contained in a deceased individual's death registration. Certain information was disclosed to the requester and other information was withheld on the basis of the exemption in section 21(1) (personal privacy). The only information remaining at issue in this appeal is the deceased's place of birth, and information relating to the person who provided the information about the deceased. In this order, the ministry's decision to deny access to the information remaining at issue is upheld.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, s. 2(1) definition of "personal information", 21(1), 21(2)(h), 21(3)(h).

Orders and Investigation Reports Considered: Orders PO-1923, PO-1936, PO-2240, PO-2876, PO-2877 and PO-3125.

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

OVERVIEW:

[1] The Ministry of Government Services (the ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for a copy of a named deceased individual's (the affected party's) death registration.

[2] In response to the request, the ministry issued a decision advising that access was granted to portions of the record, and access was denied to other portions of the record on the basis of the exemption in section 21(1) (personal privacy) of the *Act*.

[3] The appellant appealed the ministry's decision.

[4] During mediation, the appellant's representative indicated that she was not pursuing access to the deceased's social insurance number. She indicated, however, that she wished to pursue access to the severed portions of the record in order to locate the deceased's next-of-kin. As the record contained information relating to a third party, the mediator attempted to notify this third party of the request, but was unable to contact that individual.

[5] Also during mediation, the ministry revised its decision, and granted access to additional portions of the record.

[6] The appellant confirmed that she continued to appeal the ministry's decision to deny access to the deceased's place of birth, as well as the information relating to the third party.

[7] Mediation did not resolve this appeal, and it was transferred to the inquiry stage of the appeal process where an adjudicator conducts an inquiry under the *Act*. I sent a Notice of Inquiry identifying the facts and issues to the ministry, initially, and received representations in response. I then sent the Notice of Inquiry, along with a copy of the severed representations of the ministry, to the appellant, who also provided representations in response.

[8] In this order, I find that the withheld information qualifies for exemption under section 21(1) of the *Act* and I uphold the ministry's decision to deny access to this information.

RECORDS:

[9] The portions of the record remaining at issue consist of the information in the Statement of Death (Form 15) pertaining to the deceased's place of birth, as well as information relating to the third party.

ISSUES:

- A. Does the record contain "personal information" as defined in section 2(1) of the *Act*?
- B. Would disclosure of the personal information be an unjustified invasion of personal privacy under section 21(1)?

DISCUSSION:

Preliminary issue – *Crown Administration of Estates Act*

[10] As a preliminary matter, the appellant refers to certain provisions in the *Crown Administration of Estates Act* which permit the ministry to disclose personal information for the purpose of administering an estate and/or identifying and locating persons who may have an interest in the estate. The appellant argues that disclosure to her precisely meets these purposes, as the appellant is also attempting to locate heirs to the estate.

[11] A similar argument was addressed in Order PO-2807, in which adjudicator Jennifer James acknowledged that certain legislation permitted the ministry and/or the Public Guardian and Trustee (PGT) to disclose information in particular situations. However, she then stated:

... this office does not have the authority to order [the PGT] to disclose information outside the *Act*. In my view, the fact that [the PGT] could potentially disclose the information pursuant to its governing legislation has no relevancy to whether there are factors favouring the disclosure of the same information under the *Act*. As a result, I will not address the appellant's argument further in this order.

[12] I agree with the position taken by adjudicator James, and apply it to this appeal. In my view, whether or not the ministry could potentially disclose certain information in particular circumstances under its governing legislation does not affect my review of the access issues raised in this appeal.

Issue A: Does the record contain "personal information" within the meaning of section 2(1) of the *Act*?

[13] 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), which reads in part:

"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,

- (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;

[14] Section 2(2) also relates to the definition of personal information, and reads:

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

[15] There are two types of information at issue in this appeal. The first is the place of birth of the named deceased individual (the affected party). Paragraph (a) of the definition of personal information in section 2(1) of the *Act* states that "personal information" includes the national or ethnic origin of an identified individual. In my view, an individual's place of birth would disclose that person's national or ethnic origin. Accordingly, the affected person's place of birth is personal information within the meaning of that term, as defined in section 2(1) of the *Act*. In addition, because the named individual died recently, section 2(2) has no application in this appeal.

[16] The second type of information at issue is the name, address and signature of the person who provided the information about the deceased (the third party), as well as the portion of the record indicating this individual's relationship to the deceased. Paragraph (d) of the definition of personal information in section 2(1) of the *Act* clearly states that "personal information" includes the address of an identified individual. In addition, paragraph (a) states that "personal information" includes the family status of an individual. In my view, the third party's name (including signature), address, and the details of this individual's relationship to the deceased constitutes this individual's personal information under paragraphs (a), (d) and (h) of the definition.

[17] I am also satisfied that, because the third party's information includes the nature of the relationship between the third party and the deceased, and because it relates to the deceased, this portion of the record also contains the personal information of the deceased under paragraph (h) of the definition.

[18] The record does not contain the personal information of the appellant.

Issue B. Would disclosure of the personal information be an unjustified invasion of personal privacy under section 21(1)?

[19] 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.

[20] 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. That section reads:

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

if the disclosure does not constitute an unjustified invasion of personal privacy.

[21] 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).

[22] 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(1). 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.¹ The appellant has not claimed that any of the exclusions in section 21(4) apply in the circumstances of this appeal and, in my view, section 21(4) has no application to this appeal.

[23] 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).² 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.³

Deceased’ place of birth

[24] The ministry takes the position that the presumption in section 21(3)(h) applies to the place of birth appearing on the death registration. That presumption reads:

¹ *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767.

² *John Doe*, cited above.

³ Order P-239.

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.

[25] The ministry states that information about the birthplace of the deceased individual is information about the individual's ethnicity. It refers to Order PO-2877, and states:

Order PO-2877 followed previous orders ... that held that information concerning an individual's birthplace can indicate their "ethnic origins" and falls within the scope of section 2(3)(h) [Orders PO-1923, PO-1936].

In Order PO-2998, the IPC does indicate that the decision in any given appeal relating to section 21(3)(h) is determined on the specific facts of each case. In discussing section 21(3)(h) the IPC states that "...this reflects the fact that the decision in any given appeal necessarily depends on the specific information at issue" In PO-2998, the IPC found that disclosure of the birthplace ... of the deceased bride and groom would reveal their "ethnic origin" and fit within section 21(3)(h).

Order PO-3060 is another recent decision where the IPC reviewed four records for which section 21(3)(h) was claimed in relation to place of birth, and held that it applied to the birth places of three of the four individuals because disclosure of that information would reveal the ethnicity of the individual to whom it relates.

The Ministry submits that the place of birth appearing in the death registration in the present appeal falls squarely within the presumption in subsection 21(3)(h). The deceased's place of birth is ... a country with a distinct ethnicity and culture. Therefore, disclosing the deceased's place of birth is presumed to constitute an unjustified invasion of privacy as it relates to the individual's ethnic origin.

[26] Although the appellant acknowledges that some previous orders have found that disclosure of a person's place of birth would reveal their racial or ethnic origin, she also states that birthplace may not be indicative of anything more than an "accident of location." The appellant states:

... [the] place of birth of the deceased ... is not necessarily 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, researchers, engineers, teachers, and various businesses, and have had children in the Caribbean, Asia, Africa and elsewhere.

Canada itself is home to many different ethnicities, and has experienced various waves of immigration from foreign lands, so births here are not indicative of race or ethnicity.

The length of time a family has lived in a country also does not indicate ethnicity, as many Canadian families have lived in Canada for generations, while their racial or ethnic origins stem from across the globe.

Knowing a person's place of birth is not necessarily indicative of racial or ethnic origin.

[27] Based on the above, the appellant argues that the information does not fall within the presumption in section 21(3)(h).

[28] In addition, the appellant states that the only reason that the information was requested is for the purposes of reconstructing the family relationships, and that the appellant is not concerned about the racial or ethnic origin of the deceased, and does not purport to use information about the deceased's racial or ethnic origin for any other purpose.

Findings

[29] On my review of the birthplace information relating to the country of origin of the deceased, I accept the position of the ministry that this is a country with a distinct ethnicity and culture. Accordingly, on its face, disclosing the deceased's place of birth is presumed to constitute an unjustified invasion of privacy, as it relates to the individual's ethnic origin as contemplated by section 21(3)(h).

[30] With respect to the appellant's argument that an individual's birthplace is not necessarily indicative of ethnicity for a number of reasons, I recently addressed similar arguments in Order PO-3125, where I stated:

I accept the appellant's position that knowing a person's place of birth is not necessarily indicative of racial or ethnic origin. I also note that some of the appellant's arguments relating to the mobility of individuals may have more relevance for certain countries in more recent years than it

would have had many years ago. However, I must examine the application of this presumption to the information at issue in this appeal.

[31] Accordingly, because I have found that the deceased's birthplace is a country with a distinct ethnicity and culture, and that disclosure of the birthplace of the individual indicates the individual's ethnic origin, I find that its disclosure is presumed to constitute an unjustified invasion of personal privacy of the deceased individual under section 21(3)(h).⁴

[32] The Divisional Court has stated that 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).⁵ Accordingly, I find that the information relating to the deceased's birthplace qualifies for exemption under section 21(1) of the *Act*.

Personal information of the third party

[33] As indicated above, the second category of personal information contained in the record is the name (including the signature) and address of the third party who provided the information about the deceased, as well as this individual's relationship to the deceased.

[34] None of the parties take the position that any of the presumptions in section 21(3) apply to this information, and I am satisfied that they do not apply to it.

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

[35] With respect to the factors under section 21(2), the ministry takes the position that the factor in section 21(2)(h) applies to this information. That section reads:

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,

the personal information has been supplied by the individual to whom the information relates in confidence;

[36] The ministry submits that subsection 21(2)(h) applies to information given by an informant on a statement of death. It indicates that the Registration of Death document is prepared under the *Vital Statistics Act* (the *VSA*), and the ministry refers to certain sections of the *VSA* which contain confidentiality provisions and regulate who

⁴ See also Orders PO-1923, PO-1936 and PO-2877.

⁵ *John Doe*, cited above.

may obtain copies of these documents.⁶ The ministry then refers to Order PO-2877, which determined that subsection 21(2)(h) was a relevant factor that favours non-disclosure of the personal information of an individual who provided the information about the deceased on a statement of death.

[37] The appellant accepts that previous orders have found that this factor applies to information of this nature, but points out that a number of orders have given this factor "little weight."⁷

[38] On my review of the information relating to the third party who provided the information about the deceased on the Registration of Death form, I am satisfied that the individual provided this information with a reasonable expectation of privacy. I also note the specific relationship between the third party and the deceased individual in this case, and note that, unlike circumstances where an informant is only peripherally connected to the record, the third party in this appeal has a direct connection with the other information contained in the record.

[39] In the circumstances, I find that the factor in section 21(2)(h) is a relevant factor in this appeal.

Unlisted factor – benefit to unknown heirs

[40] In support of the position that the informant's information ought to be disclosed, the appellant refers to the unlisted factor that the disclosure will provide a "benefit to unknown heirs." The appellant refers to the following quotation from Order PO-2876:

Previous orders issued by this office have found that "benefit to unknown heirs" is a consideration weighing in favour of disclosure. [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 this factor is fact-specific and highly dependent on the particular circumstances of each appeal [PO-2240].

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

The appellant ... submits that disclosure of the requested information pertaining to the deceased's estate will help unknown heirs recover funds that they would otherwise be unlikely to receive. I considered this [circumstance] in Order P-1493, involving a request by an heir tracer to the Ministry

⁶ Specific references are made to sections 45(1) and 53(1) of the *VSA*.

⁷ See orders Po-1923 and PO-2876.

of Consumer and Commercial relations for access to marriage and death records. In Order P-1493, I stated:

In the appellant's view, disclosure of the records would serve to benefit individuals who would otherwise never know and never be able to prove their entitlement under an estate. Although not directly related to any of the section 21(2) considerations, I find that this is [a circumstance] favouring disclosure.

[41] The appellant also states:

Order PO-2998 ... affirmed disclosure on the basis of "benefit to unknown heirs" in spite of the PGT claiming to be in contact with rightful heirs.

Order PO-2998 reaffirmed Order PO-2807 ... in which it was decided that the PGT did not substantiate their claim to be in contact with the rightful heirs, and did not prove that they located all of the heirs. Therefore it was decided that regardless of the PGT's claim, disclosure to [the appellant] could be of benefit to unknown heirs. This was also reaffirmed in Order PO-3060 Therefore this unlisted factor of "benefit to unknown heirs" favours disclosure.

[42] I have considered the appellant's position that this unlisted factor applies. I have also reviewed the record, and considered the specific relationship between the third party and the deceased individual in this case. Unlike circumstances where an informant may be only peripherally connected to the record, the third party in this appeal has a direct connection with the other information contained in the record. However, I cannot disclose the exact nature of this relationship without revealing additional personal information about the third party and/or the affected party.

[43] I also note the statement made in Order PO-2240 which is referred to by the appellant that "this factor is fact-specific and highly dependent on the particular circumstances of each appeal."

[44] In the specific circumstances of this appeal, given the nature of the relationship between the third party and the deceased individual, I find that although the unlisted factor of "benefit to unknown heir" is a factor in this appeal, I give it little weight.

Finding

[45] I have found that the factor in section 21(2)(h) applies to the information about the third party. I have also found that the unlisted factor of "benefit to unknown heirs"

applies, but have given it little weight. On balance, I find that the factor weighing in favour of non-disclosure outweighs the factor favouring disclosure in this appeal. Accordingly, I find that disclosure of the information, relating to the third party, would constitute an unjustified invasion of personal privacy, and that it is exempt under section 21(1).

ORDER:

I uphold the ministry's decision and dismiss this appeal.

Original signed by: _____
Frank DeVries
Adjudicator

_____ November 29, 2012