

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-3125

Appeal PA12-63

Ministry of Government Services

October 25, 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. The only information remaining at issue in this appeal is the deceased's place of birth. In this order, I uphold the ministry's decision to deny access to the deceased's birthplace because this information is "personal information" and fits within the exemption in section 21(1) (personal privacy).

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(3)(h).

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

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 information relating to a named individual's death registration.

[2] In response to the request, the ministry issued a decision in which it advised that partial access to the record was granted, and that portions of the record were withheld 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 ministry decided to grant access to additional portions of the record; however, access was denied to the deceased's social insurance number and the deceased's place of birth. The ministry took the position that the disclosure of the deceased's place of birth would disclose personal information relating to the ethnicity of the deceased.

[5] Also during mediation, the appellant indicated that she was not pursuing access to the deceased's social insurance number. The appellant confirmed, however, that she continued to appeal the ministry's decision to deny access to the deceased's place of birth, and took the position that she required this information to assist in locating the deceased's next of kin.

[6] Mediation did not resolve this issue, and the file was transferred to the inquiry stage of the 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.

[7] 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.

RECORD:

[8] The information remaining at issue consists of the severed portion of the deceased's "Statement of Death" relating to the deceased's place of birth.

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 the affected person's personal privacy under section 21(1)?

DISCUSSION:

A. Does the record contain “personal information” within the meaning of section 2(1) of the *Act*?

[9] 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,
- (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;

[10] 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.

[11] The only information at issue in this appeal 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* clearly 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, the named individual died recently, and section 2(2) has no application in this appeal.

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

B. Would disclosure of the “personal information” be an unjustified invasion of the affected person’s personal privacy under section 21(1)?

[13] 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.

[14] 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.

[15] 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).

[16] 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 the information at issue.

[17] 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. In my view, section 21(4) has no application to this appeal.

[18] 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

Section 21(3)(h)

[19] The ministry takes the position that information about the birthplace of the affected party fits 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.

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

² *John Doe*, cited above.

³ Order P-239.

[20] The ministry states that information about the birthplace of the deceased individual is information about the individual's ethnicity. It 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-2877, the IPC was satisfied that information describing the birthplace and ethnic origin of the deceased and the groom fell within the section 21(3)(h) presumption. The disclosure of this information was therefore presumed to be an unjustified invasion of personal privacy of the individuals to whom it related.

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 ..." (p.10). 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.

[21] The ministry submits that because the deceased's place of birth falls within the presumption in section 21(3)(h), its disclosure would give rise to a presumed unjustified invasion of privacy and this personal information should not be disclosed.

[22] 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. The appellant states, however, that although a person's place of birth may reveal this information, it 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.

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

[24] The appellant also states that birthplace information about the deceased is important and helpful in recreating the deceased person's family history and relationships in order to establish the identity of the next-of-kin and thereby settle the deceased's estate.

Findings

[25] 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. In that respect, 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).

[26] I have also considered the appellant's arguments in favour of finding that disclosing the birthplace is not necessarily indicative of ethnicity because individuals and families frequently move for various reasons, and because certain countries are home to many different ethnicities. I accept the appellant's position that knowing a person's place of birth is not necessarily indicative of racial or ethnic origin.⁴ 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.

[27] In the present case, because the deceased individual's birthplace is a country with a distinct ethnicity and culture, and taking into account the year the individual was born, I am satisfied that disclosure of the birthplace of the individual indicates the individual's ethnic origin. Accordingly, I find that its disclosure is presumed to constitute an unjustified invasion of personal privacy of the deceased individual under section 21(3)(h).⁵

[28] 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).⁶ Accordingly, I find that the information at issue qualifies for exemption under section 21(1) of the *Act*.

ORDER:

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

Original signed by: _____
Frank DeVries
Adjudicator

October 25, 2012 _____

⁴ This is supported by the findings in some orders that disclosure of the birthplace of an individual would not reveal the individual's ethnic origin.

⁵ See also Orders PO-1923, PO-1936 and PO-2877.

⁶ *John Doe*, cited above.