



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

ORDER P-1187

Appeal P-9600037

Ministry of the Attorney General



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NATURE OF THE APPEAL:

The Ministry of the Attorney General (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to the names and dollar amounts of all estates which escheated to the Crown between 1984 and 1994 and had a value of more than \$10,000. The Ministry located two responsive records in the Office of the Public Trustee, covering the periods January 1, 1989 to September 30, 1993 and October 1, 1993 to September 30, 1995. The Ministry denied access to them, in their entirety, claiming the application of section 21(1) of the Act (invasion of privacy). The Ministry advised the appellant that it does not have any records responsive to the request for the period 1984 to 1988.

The appellant appealed the Ministry's decision to deny access. In addition, the appellant submits that records for the period 1984 to 1988 should exist. A Notice of Inquiry was provided to the Ministry and the appellant. Representations were received from both parties.

DISCUSSION:

RESPONSIVENESS OF RECORDS

The appellant has requested that the Ministry provide him "with the names and years of death for each estate valued at over \$10,000 at the time of the escheat, for any estates which escheated from 1984 to 1994, inclusive". Record 1, which was identified by the Ministry as being responsive to this request, contains the Ministry's account number and the name of each estate exceeding \$10,000 in value. Record 2 includes the Ministry's account number, the name of the estate, the date of death and the dollar value of each estate, some of which are for amounts under \$10,000.

I find that the only information contained in Record 1 which responds directly to the appellant's request is the name of the estate and its dollar value. The information contained in Record 2 which is responsive to the request is the name of the estate, the date of death and those dollar values which exceed \$10,000. The remaining information contained in these records is outside the parameters of the request and will not be considered further in this appeal.

INVASION OF PRIVACY

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including the individual's name where it appears with other information relating to the individual. I have reviewed the records at issue and find that they contain the personal information of the deceased persons who are listed therein. The names of these individuals, along with the dollar values of their estates, the dates of their deaths and the Ministry's account number assigned to each qualifies as their personal information, within the meaning of section 2(1).

Once it has been determined that a record contains personal information, section 21(1) of the Act prohibits the disclosure of this information unless one of the exceptions listed in the section applies. The only exception which might apply in the circumstances of this appeal is section 21(1)(f), which permits disclosure if it "... does not constitute an unjustified invasion of personal privacy".

Sections 21(2), (3) and (4) of the Act provide guidance in determining whether the disclosure of personal information would result in an unjustified invasion of personal privacy. Where one of the presumptions in section 21(3) applies to the personal information found in a record, the only way such a presumption can be overcome is if the personal information falls under section 21(4) or where a finding is made that section 23 of the Act applies to the personal information.

If none of the presumptions in section 21(3) apply, the Ministry must consider the application of the factors listed in section 21(2) of the Act, as well as all other circumstances which are relevant in the circumstances of the case.

The Ministry indicates that it agrees to the disclosure of the names of the estates which are contained in the records but that it cannot disclose the remaining information, particularly the dollar values of the estates. It submits that the disclosure of the dollar values of the estates would result in a presumed unjustified invasion of the personal privacy of the deceased persons under section 21(3)(f) of the Act as this information describes the finances, assets and net worth of the deceased persons at the time their estates escheated to the Crown.

The appellant submits that in 1989 he submitted a request under the Act for access to the information contained in each "Form #1" held by the Ministry in relation to estates which escheated to the Crown in the fiscal year 1986-87. The appellant appealed the Ministry's decision to deny access to lists of names similar to those in the present appeal. In Order 71, former Commissioner Sidney B. Linden ordered the Ministry to disclose the names of the estates because to do so would not result in an unjustified invasion of the personal privacy of the deceased persons.

The appellant argues that he ought to be entitled to the same information again, as well as the dates of death and dollar amount of each estate valued at more than \$10,000.

Following the reasoning set out by Commissioner Linden in Order 71, I find that the disclosure of the names of the estates alone would not constitute an unjustified invasion of the personal privacy of the deceased persons. I find, however, that the disclosure of the dollar values of the estates would result in a presumed unjustified invasion of the personal privacy of the deceased persons under section 21(3)(f). This information qualifies for exemption, therefore, under section 21(1).

Neither party has made any submissions on the application of the factors contained in section 21(2) to the remaining information, the dates of death for each estate which are contained in Record 2. As I have not been provided with any considerations weighing in favour of the disclosure of this personal information to the appellant, I find that its disclosure would result in an unjustified invasion of the personal privacy of the deceased persons. The dates of death are, accordingly, also exempt from disclosure under section 21(1).

REASONABLENESS OF SEARCH

Where a requester provides sufficient details about the records which he is seeking and the Ministry indicates that further records do not exist, it is my responsibility to ensure that the

Ministry has made a reasonable search to identify any records which are responsive to the request. The Act does not require the Ministry to prove with absolute certainty that further records do not exist. However, in my view, in order to properly discharge its obligations under the Act, the Ministry must provide me with sufficient evidence to show that it has made a reasonable effort to identify and locate records responsive to the request.

Although an appellant will rarely be in a position to indicate precisely which records have not been identified in an institution's response to a request, the appellant must, nevertheless, provide a reasonable basis for concluding that such records may, in fact, exist.

The Ministry submits an affidavit from Counsel with the Office of the Public Guardian and Trustee in which she describes the unsuccessful searches which she undertook for records responsive to the request for the period 1984 to 1988. I am satisfied that the Ministry's efforts to locate records responsive to this portion of the appellant's request were reasonable in the circumstances of this appeal.

ORDER:

1. I order the Ministry to disclose to the appellant the names of the estates which appear in Record 1 as well as the names of those estates valued at more than \$10,000 which appear in Record 2 by sending him a copy by **June 14, 1996**.
2. I uphold the Ministry's decision to deny access to the remaining information contained in the records and dismiss the appeal regarding the reasonableness of the Ministry's search.
3. In order to verify compliance with the provisions of this order, I reserve the right to require the Ministry to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 1.

Original signed by: _____
Donald Hale
Inquiry Officer

_____ May 24, 1996