



**Information and Privacy  
Commissioner/Ontario**

**Commissaire à l'information  
et à la protection de la vie privée/Ontario**

# **ORDER PO-2423**

**Appeal PA-040093-3**

**Ministry of Government Services**



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## **NATURE OF THE APPEAL:**

A request was submitted to the Ministry of Consumer and Business Services, now the Ministry of Government Services (the Ministry), under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for a photocopy of the application for a certificate of marriage issued on a specific date.

In a letter sent to provide some background, the requester set out that information was sought regarding the issuance of the certificate. In particular, the requester posed the following questions:

- Why was another certificate issued?
- Who applied for this new certificate?
- When did this person apply for it?
- What address did you send this new certificate to?

The requester asserted that the information sought would reside in the Ministry's computer records.

In response to a request for clarification by the Ministry, the requester clarified that he sought a photocopy of the completed form entitled "Request for Marriage or Death Certificate" that was used to obtain the identified marriage certificate.

In its initial decision, the Ministry advised that this type of document is only retained for 15 months and then destroyed. The Ministry stated that the record that was requested no longer exists.

The requester (now the appellant) appealed the initial decision of the Ministry, believing that a record responsive to his request should exist. Accordingly, appeal file PA-040093-2 was opened to address the reasonableness of the search for responsive records under section 24 of the *Act*. The issue of the reasonableness of the search for the Request for Marriage or Death Certificate form for the identified marriage certificate was decided in Order PO-2309. As set out in that Order, the adjudicator was satisfied that the Ministry made a reasonable search for the document and it could not be located. The adjudicator was satisfied that this was because it was destroyed in accordance with the Ministry's record retention schedule. As a result, the appeal was dismissed.

During the mediation of the present appeal (PA-040093-3), the appellant indicated that he was seeking access to any records (including electronic) that relate to the issuing of the identified marriage certificate. Although this may have been outside the scope of the original request, the Ministry conducted a further search and located an electronic listing of purged records, from which two entries related to the application for the identified marriage certificate were extracted. The entries consist of the name of the appellant, various codes and a municipal address to which the identified marriage certificate was sent.

In a subsequent decision, relying on the exemption in section 21 of the *Act* (personal privacy) the Ministry granted access to everything in the extracted entries except the municipal address to which the certificate was sent. The appellant appealed the denial of access to this information.

The appellant was also not satisfied with the Ministry's search that yielded the extracts and maintained that information relating to the issuance of the identified marriage certificate, including the payment submitted with the application, exists in other forms. As a result, the reasonableness of the Ministry's search for records other than the identified marriage certificate became an issue in this appeal.

Mediation did not result in resolution of appeal PA-040093-3 and the matter was moved to the adjudication stage.

A Notice of Inquiry setting out the issues in the appeal was initially sent to the Ministry which, after an extension was granted, filed representations in response. The Notice of Inquiry along with a copy of the Ministry's representations, in full, was then sent to the appellant. The appellant then sent a letter to this office alleging that granting the extension demonstrated a "lack of impartiality and bias".

In response, I sent a letter to the appellant advising as follows:

The content of your letter does not satisfy the test for reasonable apprehension of bias as set out by DeGrandpre J. in the Supreme Court of Canada's decision in *Committee for Justice and Liberty v Canada (National Energy Board)*, [1978] 1 S.C.R. 369 as articulated in the Supreme Court of Canada's decision, *R. v. S. (R.D.)* (1997), 151 D.L.R. (4<sup>th</sup>) 193 at page 207.

If, however, you wish to provide further representations on this issue you may include them along with your representations in response to the Notice of Inquiry.

The appellant then sent representations addressing the issues in the Notice of Inquiry. At the end of the representations the appellant included an excerpt that he states is from a Judicial Council pamphlet and expressed his expectation that any ruling made would be based on the law and evidence. There was no further discussion of an allegation of a lack of impartiality or bias in his representations.

Shortly thereafter, the appellant sent supplementary representations that referenced a Mediator's Report in another matter involving the appellant. The appellant's position was that some information in the Mediator's Report supported the appellant's allegation that the Ministry did not conduct a reasonable search for responsive records.

As I determined that the Ministry should be provided an opportunity to address the representations of the appellant, in particular those relating to the Mediator's Report in the other matter, I forwarded the appellant's representations to the Ministry for Reply. The Ministry provided Reply representations.

At issue in this appeal is the scope of the request, the reasonableness of the Ministry's search for responsive records relating to the issuance of the identified marriage certificate, the effect, if any,

of the ruling in Order PO-2309, and finally, the denial of access to the municipal address in the two entries.

## **RECORD AT ISSUE**

The record consists of two entries related to the application for the identified marriage certificate extracted from an electronic listing of purged records. The information at issue consists of a municipal address severed from the two entries.

## **DISCUSSION**

### **SCOPE OF THE REQUEST**

Section 24 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

- (1) A person seeking access to a record shall,
  - (a) make a request in writing to the institution that the person believes has custody or control of the record;
  - (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record; and

. . . . .

- (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour [Orders P-134, P-880].

As addressed above, after discussions with the mediator, the Ministry conducted a further search for any records (including electronic) that related to the issuing of the identified marriage certificate. As set out in the Mediator's Report, the Ministry ultimately located an electronic record from which two entries related to the application for the identified marriage certificate were extracted. The Ministry then issued its subsequent decision granting partial access to this information (withholding the municipal address where the certificate was sent) and waiving the standard fee.

Although initially stating in its supplementary decision letter that records (including electronic) that related to the issuing of the identified marriage certificate, did not fall within the scope of the original request, the Ministry subsequently located responsive information, set out the exemptions it sought to rely upon to deny access to part of it (the municipal address), waived the fee and set out the mechanism for an appeal of its decision. In all the circumstances, in light of the steps taken by the Ministry in this matter, in my opinion it would be just and expeditious to address in this Order the appellant's request for any records (including electronic) that related to the issuing of the identified marriage certificate. Accordingly, my determination on that issue follows.

### **SEARCH FOR RESPONSIVE RECORDS**

Where an appellant claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records within its custody or control [Orders P-85, P-221, PO-1954-I].

Although an appellant will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.

The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records within its custody or control [Order P-624].

A reasonable search is one in which an experienced employee expending reasonable effort conducts a search to identify any records that are reasonably related to the request (see Order M-909).

The appellant alleges that information relating to the issuing of the identified marriage certificate, including the payment submitted with the application, exists in other forms. In support of his position he refers to documentation relating to record retention and the Mediator's Report in Appeal PA-040296-1 (also commenced by the appellant), which he says support his position that additional responsive records exist.

The Ministry submits that the issue of the reasonableness of its search for records (including electronic) that relate to the issuing of the specified marriage certificate was finally determined in Order PO-2309. The Ministry submits that the doctrine of *res judicata* applies, and the appellant may not raise this issue.

In the alternative, liberally interpreting the appellant's access request, the Ministry submits that it conducted an exhaustive search of its records and found only the purge listing which yielded the two extracts discussed above. It states that at the time of the Oral inquiry which led to Order PO-

2309, every possible avenue of search available to the Ministry had been exhausted. In support of its position, the Ministry relies on evidence of its employees given at the inquiry, although it does not specify what that was. The Ministry says that it conducted no further searches in respect of the appellant's request.

In Order PO-2309, the Ministry's search for the application for the marriage certificate and the appellant's concerns regarding an alleged privacy breach were addressed, but the issue of the expanded request for all records relating to the issuing of the specified marriage certificate was not. Acting Adjudicator Leslie McIntyre explained:

I have carefully considered all of the representations provided by the parties. As I indicated earlier, the *Act* does not require the institution to prove with absolute certainty that records do not exist; however, in order to properly discharge its statutory obligations, the institution must provide me with sufficient evidence to show that it has made a reasonable effort to identify and locate any records which are responsive to the request.

Based on the representations provided by the Ministry, I am satisfied that the search for the application for the marriage certificate was undertaken by experienced, knowledgeable employees of the institution and that all reasonable steps were taken to respond to the appellant's request. I am also satisfied that the requested marriage certificate application was destroyed in accordance with the Ministry's record retention schedule.

With respect to the appellant's concern regarding a possible privacy breach and the additional records he is seeking in this regard, the appellant may, if he wishes, file a privacy complaint with this office and is also free to make a new request to the Ministry for any other records that he is seeking.

Finally, it appears from his representations that the appellant believes that additional records responsive to his expanded request for all records relating to the issuing of the specified marriage certificate should exist. However, as noted above, any issues relating to this expanded request will be dealt with in his new appeal.

Therefore, while I find that Order PO-2309 does finally determine the reasonableness of the Ministry's search for the application for the identified marriage certificate, it does not apply to the appellant's request for other additional records (including electronic) relating to the issuing of the identified marriage certificate, which was expressly removed from the ambit of the order. There has been no order dealing with the reasonableness of the Ministry's search for other records relating to the application. As a result, the Ministry cannot rely on Order PO-2309 to support a claim of *res judicata* in this appeal.

While it is the Ministry's position that it has conducted an exhaustive search, that position is not supported in a detailed way. In my opinion, the Ministry does not explain in sufficient detail what actual steps were taken to comply with its obligations under the *Act* with respect to a search for additional records (including electronic) relating to the issuing of the identified marriage certificate. Pointing to evidence given in an oral inquiry considering the reasonableness of the search for a different record, without setting out any particulars in the representations it filed, in the circumstances of this appeal, is not sufficient. As a result, I will order the Ministry to undertake a further search for additional records, including electronic, (other than the extracts that have been produced, and of course, the application itself) relating to the issuance of the identified marriage certificate.

I will now address the exemption that the Ministry claims is applicable to support its partial denial of access to the extracts that it did locate.

### **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.

Section 2(1) of the *Act* defines "personal information" to mean recorded information about an identifiable individual, including, the address of the individual (paragraph (d)) as well as the individual's name where it reveals other personal information about the individual (paragraph (h)).

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.)].

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, PO-2225], but 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].

In the circumstances of this appeal, if the withheld municipal address is disclosed it is reasonable to expect that, just as the Ministry did, the occupant of the municipal address can be identified through the use of investigative techniques. [See Order PO-2267]. This would reveal the identity of the individual who requested the marriage certificate. Because it reveals information about an identifiable individual, I find that the municipal address severed from the extracts is personal information. As discussed above, the extracts also contain the name of the appellant, which is his personal information. The appellant's personal information has been disclosed to him.

In circumstances where a record contains both the personal information of the appellant and another individual, the request falls under part III of the *Act* and the relevant personal privacy exemption is the discretionary exemption at section 49(b). [See Order M-352.] I will therefore consider whether section 49 (b) applies in this case.

## **INVASION OF PRIVACY**

Section 49(b) of the *Act* reads as follows:

A head may refuse to disclose to the individual to whom the information relates personal information,

where the disclosure would constitute an unjustified invasion of another individual's personal privacy;

To determine whether the disclosure of another individual's personal information would or would not be an unjustified invasion of the personal privacy of the individual to whom the information relates under 49(b), the factors and presumptions in sections 21(2), (3) and (4) are of assistance.

Section 21(2) provides some criteria for the institution to consider in making this determination; section 21(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy; and section 21(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

The Divisional Court has stated that once a presumption against disclosure has been established under section 21(3), it cannot be rebutted by either one or a combination of the factors set out in 21(2) [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (*John Doe*)] though it can be overcome if the personal information at issue falls under section 21(4) of the *Act*, or if a finding is made under section 23 of the *Act* that a compelling public interest exists in the disclosure of the record in which the personal information is contained which clearly outweighs the purpose of the exemption. [See Order PO-1764]

I have reviewed the provisions of sections 21(3) and (4) and find that none apply. I will therefore consider the application of section 21(2).

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

Section 21 (2) 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,



- (a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny;
- (b) access to the personal information may promote public health and safety;
- (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;
- (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
- (f) the personal information is highly sensitive;
- (g) the personal information is unlikely to be accurate or reliable;
- (h) the personal information has been supplied by the individual to whom the information relates in confidence; and
- (i) the disclosure may unfairly damage the reputation of any person referred to in the record.

The appellant insists that the information be disclosed, but does not specifically identify any factors or circumstances favouring disclosure under section 21(2). Having reviewed the record and the representations of the parties, I am not satisfied that any factor or circumstance favouring disclosure of the withheld information applies in this case.

I find that, based on the material filed (including the confidential representations of the Ministry upon which I can not elaborate), the severed municipal address is “highly sensitive” within the meaning of section 21(2)(f) (see Orders M-1053 and PO-2339).

Having found that the factor favouring privacy protection at section 21(2)(f) applies, and in the absence of any factors or circumstances favouring disclosure in this case, I find that the disclosure of the severed information, which consists solely of the municipal address to which the certificate was sent, would be an unjustified invasion of personal privacy. I therefore find that the exemption under section 49(b) applies to the severed portions of the records at issue.

To the extent that the appellant's representations could be considered to raise the application of the "public interest override" in section 23, based on the material before me (including the confidential representations of the Ministry), I am not satisfied on the facts of this case that a compelling public interest exists in the disclosure of the municipal address that outweighs the purpose of the section 49(b) exemption.

Finally, based on the steps that the Ministry took in this matter, including those detailed in its confidential representations as well as the fact that the Ministry released to the appellant all the information in the extracts except the municipal address of another identifiable individual, I am satisfied that it properly exercised its discretion to withhold the severed information, in the circumstances of this case.

**ORDER:**

1. I order the Ministry to undertake a further search for records, including electronic, (other than the extracts that have been produced and the application for the identified marriage certificate) relating to the issuance of the identified marriage certificate, using the date of this order as the date of the request.
2. I uphold the Ministry's decision not to disclose the municipal address in the two excerpts.

Original signed by: \_\_\_\_\_  
Steven Faughnan  
Adjudicator

\_\_\_\_\_  
October 18, 2005