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

ORDER P-1407

Appeal P_9700075

Ministry of Consumer and Commercial Relations

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NATURE OF THE APPEAL:

The appellant submitted a request to the Ministry of Consumer and Commercial Relations (the Ministry) for access to a copy of his father's marriage certificate. The appellant's father died in 1961. In his request, the appellant stated that "... I have been advised by ... the Office of the Registrar General that since one of the partners died over 30 years ago this request will be met". The request was made under the Freedom of Information and Protection of Privacy Act (the Act).

The Ministry provided the appellant with partial access to the marriage certificate. It withheld certain information pursuant to section 21(1) of the Act (invasion of privacy).

The appellant filed an appeal of this decision.

A Notice of Inquiry was sent to the appellant and the Ministry. A Supplementary Notice of Inquiry was subsequently sent to the parties to canvass their views on some additional issues. Representations were received from both parties.

THE RECORD

The Ministry administers the Vital Statistics Act (the VSA) through the Office of the Registrar General (the ORG). Under the VSA, there is a uniform system of registration for all births, marriages, deaths, still-births, adoptions and changes of name that occur in Ontario.

As noted above, the appellant's request refers to a copy of his father's "marriage certificate". The Ministry identified a document which, although entitled "Marriage Certificate", is, in fact, the registration of the marriage which is issued under section 45(2) of the VSA. In its submissions, the Ministry notes that officials with ORG determined that the appellant sought access to this document as it contains more information than the marriage certificate per se. The marriage certificate is a certified extract of only some of the information contained in the marriage registration, is governed by the provisions of section 44(3) of the VSA and is issued in Form 30, prescribed under the regulations to the VSA.

Although I am satisfied that it is the registration of the marriage which is the record at issue in this appeal, the following discussion will address some issues related to access to the certified extract as there appears to be some confusion on both the part of the Ministry and the appellant concerning access to each of these documents.

DISCUSSION:

PERSONAL INFORMATION

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.

Section 2(2) of the Act provides that personal information does not include information about an individual who has been dead for more than thirty years. As the appellant provided the Ministry with a copy of his father's death certificate indicating that his father had died in 1961, the Ministry has disclosed the information of his father, the bridegroom.

The Ministry has not disclosed the following information from the registration of the marriage: the name, age, occupation, religious denomination, ability to read and write, and residence and birthplace of the bride; the names and addresses of two witnesses; the religious denomination of the person solemnizing the marriage; and the names of the bride's parents, as well as her father's birthplace. The name and birthplace of the bride would appear in a marriage extract.

The Ministry submits that, as the bride died in 1979, the information contained in the record constitutes her personal information. I agree.

There is no indication on the face of the record, nor has any other information been provided to me to indicate the probable ages of the witnesses, the bride's parents or the person who solemnized the marriage. In these circumstances, I adopt the approach of Inquiry Officer Mumtaz Jiwan as set out in Order P-1232, in order to determine if the information in the record constitutes the personal information of these individuals. In that order, she states:

> In my view, given the records at issue and the particular circumstances of this appeal, it is permissible for me to make some assumptions, based on the evidence on the face of the records. These assumptions relate to the probable age of individuals and to the age beyond which a person would not reasonably be expected to live. Because privacy protection is a fundamental principle in the Act, it is appropriate to be conservative in making assumptions that would lead to disclosure of anything that could be personal information.

In that order, Inquiry Officer Jiwan considered a marriage record from 1923. In that case, had the bride been alive at the time of the order, she would have been 95 years old. In these circumstances, the Inquiry Officer felt that it was reasonable to assume that the information about the bride's parents related to individuals who would have been much older than 95 years of age at that time and who would likely have been dead for more than 30 years.

In the current appeal, the Ministry notes that, if she were still alive, the bride would be 88 years of age. It submits that, in this case, it is not appropriate to assume that her parents would have been dead for more than thirty years. The Ministry has, therefore, treated information about the bride's parents as their personal information. In this case, based on a conservative estimate, without evidence to the contrary, I am not prepared to find that the bride's parents have been dead for more than thirty years. Accordingly, I accept the Ministry's submissions that the information related to the bride's parents constitutes their personal information.

I have no evidence before me with respect to the possible ages of the witnesses and the individual who officiated at the wedding. Any or all of the individuals may be older or younger than the bride and groom. In the absence of any evidence, I must err on the side of caution to protect the personal privacy of these identifiable individuals and find that the information related

to the witnesses and the individual solemnizing the marriage constitutes the personal information of these individuals.

INVASION OF PRIVACY

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. Three of these exceptions, sections 21(1)(c), (d) and (f) may apply in the circumstances of this appeal. These exceptions state:

> A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,
>
> (c) personal information collected and maintained specifically for the purpose of creating a record available to the general public;
>
> (d) under an Act of Ontario or Canada that expressly authorized the disclosure;
>
> (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

Section 21(1)(c)

The Ministry states that the personal information at issue has not been collected and maintained specifically for the purpose of creating a record available to the general public.

Sections 44(3) and 45(2) of the VSA set out the circumstances under which an individual may obtain from the Registrar General a copy of a marriage certificate and a registration of a marriage, respectively. These sections provide:

> 44(3) Upon application and upon payment of the prescribed fee,
>
> (a) one of the parties to the marriage;
>
> (b) a parent of one of the parties;
>
> (c) a child of the marriage; or
>
> (d) any person with the approval of the Registrar General,
>
> may obtain from the Registrar General a **marriage certificate** in respect of any marriage of which there is a registration in his office.
>
> 45(2) No **certified copy of a registration of a marriage** shall be issued except to one of the parties to the marriage or to a person authorized by the

> Registrar General or the order of a court and upon payment of the prescribed fee. [emphases added]

In its submissions, the Ministry has referred to the fact that the personal information in a copy of the registration of a marriage is available only to a person who has provided written authorization from the next of kin and thereby received the "approval" or "authorization" of the Registrar General, as set out in sections 44(3)(d) and 45(2) respectively of the VSA. While one of the parties set out in sections 44(3)(a), (b) or (c) may, upon payment, receive a copy of a marriage certificate, in my view, this does not constitute availability to the general public.

In my opinion, the provisions of the VSA are clear in that, while access is permitted, it is limited to certain individuals. Accordingly, I accept the submissions of the Ministry that neither a marriage certificate nor a registration of a marriage contains personal information collected and maintained specifically for the purpose of creating a record available to the general public. Therefore, the exception in section 21(1)(c) does not apply.

Section 21(1)(d)

Although he has not expressed it in these terms, it is the appellant's position that the VSA expressly authorizes disclosure of the requested information to him as he is a "child of the marriage" for the purposes of section 44(3)(c) of that legislation.

The appellant has provided this office with a copy of the Application Instructions supplied by the ORG to individuals wishing to apply for copies of documents held by that office. These instructions state that the following individuals may obtain a certified photostatic copy or certificate of marriage:

(a) the bride or groom named on the registration;

(b) children of the marriage if the bride/groom deceased;

(c) parents of the deceased bride/groom; and

(d) authorized representative of (a), (b) or (c).

The appellant submits that these instructions provide further support for his position that as his father is deceased he is entitled as a "child of the marriage" to receive the requested information. He states that the term "child of the marriage" is not defined in the VSA and that he should not be discriminated against because when his father married the woman named on the certificate as the bride, she did not adopt him.

The Ministry's position is that, in the circumstances of this case, the VSA does not expressly authorize disclosure of the requested information to the appellant. It makes a number of points in this regard.

First of all, as noted previously, the Ministry states that an application for and disclosure of a copy of a **marriage certificate** is governed by the provisions of section 44(3), while the

provisions related to disclosure of the **certified copy of the registration of a marriage** is governed by section 45(2) of the VSA. In its submissions, the Ministry acknowledges that the Application Instructions referred to by the appellant make no distinction between entitlement to a marriage certificate and a certified copy of the marriage registration. The Ministry also acknowledges that, as far as entitlement to a marriage certificate is concerned, there is no statutory requirement that the bride or groom be deceased in order for a child of the marriage or a parent of one of the parties to obtain a marriage certificate. The Ministry advises that it will be amending the Application Instructions accordingly.

However, the Ministry submits that, regardless of the Application Instructions, section 21(1)(d) of the Act does not apply in the circumstances of this appeal whether the appellant is seeking access to the marriage certificate (section 44(3)) or the certified copy of the registration of the marriage (section 45(2)).

The Ministry's position with respect to section 44(3) is as follows:

> Under section 44(3)(c) of the VSA, upon application and upon payment of the prescribed fee, a "child of the marriage" may obtain a marriage certificate from the Registrar General. This term is not defined in the VSA, but as a matter of policy "child of the marriage" has been interpreted by the ORG as meaning a biological or adopted child of both parties to the marriage. The current section 44(3) of the VSA dates back to 1948 ... The Respondent submits that this provision relates to a time when it was important for a child to be able to demonstrate that he or she was legitimate, and, therefore the VSA entitled a child to proof of his parents' marriage i.e. a certificate. The Respondent is aware that the current provisions of the *Divorce Act* R.S.C. 1985, c.3 as amended define "child of the marriage" in a broader fashion, but this is a federal statute with a much different purpose than the VSA. The *Divorce Act* deals with dissolution of marriage, and in particular, with support, custody of and access to children, who are not necessarily the biological or adopted children of the couple. The VSA is a statute that deals with registration of vital events and providing certified evidence of these events. Given the context and history of the VSA, the Respondent has adopted the interpretation set out above, which, the Respondent submits, is consistent with the spirit and intent of this Act. Since the Requester is seeking the marriage certificate of his father and step-mother, under the ORG's policy, he is not a child of the marriage and is not entitled to a certificate of the marriage. There is no evidence that the Requester was adopted by his step-mother.

The Ministry's submissions with respect to section 45(2) of the VSA are similar to those outlined above. "A person authorized by the Registrar General" may receive a certified copy of the registration of the marriage. The Ministry states that, as a matter of policy, it does not issue a certified copy of the registration to a child of the marriage unless the bride or groom is deceased. "A child of the marriage" is subject to the same interpretation as utilized for the purposes of section 44(3)(c).

In summary, it is the Ministry's position that the VSA does not expressly authorize the disclosure to the appellant of the personal information contained in either a marriage certificate or

certificate of registration. It adopts the finding of Inquiry Officer Jiwan in Order P-1232 where, when addressing the requester's objection to the Ministry's requirement of authorization from the next of kin, she stated:

> In my view, I do not have jurisdiction to make a determination on the appropriateness of this or the change in policy and/or practice; I can only make a finding under the Act.

Thus, the Ministry concludes that the use of its discretion in interpreting the provisions of the VSA is not subject to appeal under the Act.

As noted, the term "child of the marriage" is not defined in the VSA. The Ministry's policy reasons for adopting the restricted definition of this term in both sections 44(3) and 45(2) relate to circumstances which existed in 1948 when the precursor to section 44(3) was enacted. The Ministry acknowledges, but rejects the broader interpretation of this phrase in the Divorce Act "because it is a federal statute with a much different purpose".

There is no Ontario legislation which defines "child of the marriage". The Divorce Act is the only federal legislation which includes a definition of this term. Accordingly, it is my view that it is appropriate to consider the language of that statute.

The term "child of the marriage" is defined in sections 2(1) and (2) of the Divorce Act as follows:

> (1) "child of the marriage" means a child of two spouses or former spouses who, at the material time,
>
> (a) is under the age of majority and who has not withdrawn from their charge, or
>
> (b) is the age of majority or over and under their charge but unable, by reason of illness, disability or other cause, to withdraw from their charge or to obtain the necessaries of life;
>
> (2) For the purposes of the definition "child of the marriage" in subsection (1), a child of two spouses or former spouses includes
>
> (a) any child for whom they both stand in the place of parents; and
>
> (b) any child of whom one is the parent and for whom the other stands in the place of the parent.

This definition clearly shows that Parliament takes a broader approach to ascertaining who is a child of the marriage. In my view, Parliament has also recognized that the definition of child of the marriage is one which must change over time to reflect the changing social patterns in the

country and the current realities of what were once considered "non-traditional" parent-child relationships.

In Ontario, Rule 69.02 of the Rules of Civil Procedure under the Courts of Justice Act, states that the term "child of the marriage" in Rule 69, which deals with the procedures for divorce actions, has the same meaning as in section 2 of the Divorce Act.

The Family Law Act, does not define the phrase "child of the marriage". It does include definitions of the terms "child" and "parent" as follows:

> "child" includes a person to whom a parent has demonstrated a settled intention to treat as a child of his or her family, except under an arrangement where the child is placed for valuable consideration in a foster home by a person having lawful custody;
>
> "parent" includes a person who has demonstrated a settled intention to treat a child as a child of his or her family, except under an arrangement where the child is placed for valuable consideration in a foster home by a person having lawful custody;

Like the approach taken in the Divorce Act, it is my opinion that these definitions reflect the changing nature of child-parent relationships.

I do not accept the Ministry's submissions that because the Divorce Act is a federal statute with a different purpose from that of the VSA, the Divorce Act definition of "child of the marriage" is irrelevant. The Divorce Act addresses such matters as support, custody of and access to children who may not be the biological or adopted children of a couple whose marriage is dissolved. However, the Divorce Act and the VSA, as well as the Family Law Act are statutes which attempt to circumscribe members of the "family" to determine who falls within and without this group. In the case of the VSA, if you fall within the definition of "child of the marriage" you fall within this group for the purpose of obtaining an extract of the marriage certificate under section 44(3)(c) and also satisfy one of the criteria the Ministry has adopted for providing a copy of the registration itself under section 45(2). In the case of the Divorce Act and the Family Law Act, you are entitled to other rights such as the receipt of support.

Inquiry Officer Jiwan's comments in Order P-1232 that she did not have the jurisdiction to make a determination on Ministry policy or practice are, in my view, limited to conditions required by the Registrar General in order to give his "approval" under section 44(3)(d) and to "authorize" disclosure to someone under section 45(2). In my opinion, I may determine whether the Ministry's interpretation of "child of the marriage" in section 44(3)(c) of the VSA for the purposes of section 21(1)(d) of the Act is correct.

In my view, the Ministry's narrow definition of "child of the marriage" may result in the situation in which an individual may, for example, qualify as a child of the marriage under the Divorce Act and/or the Family Law Act and be ordered into the custody of one or both parents, yet not be entitled to receive copies of any documentation under the VSA (neither the extract nor the registration certificate) which evidences the "relationship" of his or her "parents". In my

opinion, such circumstances highlight the "absurd result" of the Ministry's interpretation of this statute. Accordingly, I will consider whether the appellant's step-mother would have been considered to have "stood in the place of a parent" for the purposes of the Divorce Act or "demonstrated a settled intention" to treat the appellant as a child of her family pursuant to the Family Law Act definition.

The information requested by the appellant relates to his father's second marriage. When the appellant's father married for the second time in 1936, the appellant and his siblings were living with their mother. The appellant would visit his father and step-mother during a three-year period until 1939, when his father and step-mother moved to the west coast. They exchanged correspondence until the appellant enlisted in the Canadian forces. When the appellant returned to Canada he had very little contact with his father and step-mother who moved frequently throughout the west coast of Canada and the United States. The appellant was named as one of the beneficiaries in his step-mother's will.

In my view, these facts would be insufficient for a finding that the appellant was a "child of the marriage" for the purposes of the Divorce Act. Nor can it be said that the appellant's step-mother demonstrated the requisite "settled intention" for the purposes of the Family Law Act

In summary, even if I were to apply a broader definition of the term "child of the marriage" than that used by the Ministry in interpreting section 44(3)(c) of the VSA, the facts provided to me by the appellant do not support such a finding. Accordingly, I find that, in the circumstances of this case, the VSA does not expressly authorize disclosure of the extract to the appellant and the exception in section 21(1)(d), does not apply.

Section 21(1)(f)

Section 21(1)(f) of the Act permits disclosure if it "does not constitute an unjustified invasion of personal privacy."

Disclosing the types of personal information listed in section 21(3) is presumed to be an unjustified invasion of personal privacy. If one of the presumptions applies, the institution can disclose the personal information only if it falls under section 21(4) or if section 23 applies to it.

If none of the presumptions in section 21(3) apply, the institution must consider the factors listed in section 21(2), as well as all other relevant circumstances.

As noted, the substance of the appellant's representations is that he is a "child of the marriage". I have addressed this issue in the context of section 21(1)(d) of the Act. While I sympathize with the appellant's position, he has not raised any other relevant circumstances or factors which weigh in favour of disclosure of the personal information at issue. Accordingly, I find that the exception in section 21(1)(f) does not apply and that disclosure would constitute an unjustified invasion of personal privacy.

ORDER:

I uphold the decision of the Ministry.

Original signed by: June 20, 1997
Anita Fineberg
Inquiry Officer