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**Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 181-1997
August 12, 1997**

INQUIRY RE: A decision by the Ministry of Health and Ministry Responsible for Seniors to refuse access to information on a birth certificate

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1. Description of the review

As Information and Privacy Commissioner, I conducted a written inquiry at the Office of the Information and Privacy Commissioner (the Office) on June 11, 1997 under section 56 of the *Freedom of Information and Protection of Privacy Act* (the Act). This inquiry arose out of a request for review of a decision of the Ministry of Health and Ministry Responsible for Seniors (the Ministry) to withhold information on the applicant's father's birth certificate, specifically the name of her father's birth mother (the third party).

2. Documentation of the inquiry process

On December 19, 1996 the Ministry received a letter from an applicant requesting information on her father's original birth certificate.

On February 25, 1997 the Ministry provided the applicant with severed copies of the requested records. Severances were made under section 22 of the Act. Other records were not provided to the applicant because they had been given to her by the (then) Ministry of Social Services in response to an earlier request.

On March 13, 1997 the applicant wrote to my Office to request a review of the decision by the Ministry to withhold the severed information.

On May 8, 1997 my Office gave notice to the applicant and the Ministry of the written inquiry to be held on June 11, 1997.

On May 29, 1997 the Ministry disclosed information in the records pertaining to the applicant's father. This included the father's date of birth, place of birth, handwritten notes of the names of the father's adopted parents, and the date the birth was registered. The Ministry withheld information on the records pertaining to the applicant's father's birth mother (the third party).

3. Issue under review and the burden of proof

The issue under review concerns the Ministry's decision to apply section 22 of the Act to personal information about the third party on the birth certificate of the applicant's father. The information was withheld on the basis that its disclosure would be an unreasonable invasion of the third party's privacy.

The relevant portions of section 22 read as follows:

Disclosure harmful to personal privacy

- 22(1) The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy
- (2) In determining under subsection (1) or (3) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether
- ...
- (h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant.

Section 57 of the Act establishes the burden of proof on the parties in this inquiry. Under section 57(2), if the record or part that the applicant is refused access to contains personal information about a third party, it is up to the applicant to prove that disclosure of the information would not be an unreasonable invasion of the third party's personal privacy.

4. The records in dispute

Personal information severed from the following records is in dispute:

- a) the "Schedule D - Particulars of Birth" filed January 27, 1914 under the *Vital Statistics Act*; and
- b) "Certificate of Birth" under the *Vital Statistics Act*, dated January 15, 1932.

5. The applicant's case

The applicant's interest in access to the information in dispute is for purposes of genealogy, specifically tracing her family tree. She drew to my attention, as part of the rationale for disclosure in this case, the growth in the placement of older records of this type on the World Wide Web for anyone to inspect. With respect to one of the two pages in dispute, she states: "If there is anything on this page to further enhance a genealogical search for ancestors, I request its release to me in its entirety. Everyone has a right to their Heritage."

The applicant also asked whether it is necessary to remove what she already knows on the basis of documents previously received. She then itemized for me what she does now know: "All these particulars were sent to me by Ministry of Social Services when I applied for the opening of my father's adoption File Early 1996."

With respect to the application of section 22 of the Act to the records in dispute, the applicant submits:

In light of the information I have supplied above and the strong probability that my grandmother is deceased, and the unlikelihood that any of her surviving relatives would or could be contacted by me as a result of the release of this information, coupled with the current prevailing mindset as to what would constitute unfair damage to her reputation, I respectfully request the release of the information in question intact.

6. The Ministry's case

According to the Ministry, the only personal information in dispute concerns the identity of the third party:

The Public Body submits that, in considering all relevant factors, the disclosure of this information would be an unreasonable invasion of her privacy under section 22 of the Act. Disclosure of this information is also not permitted under section 36 of the Act because the Public Body has no knowledge as to whether the Third Party has been dead for 20 or more years. It is possible that the Third Party is still living. (Submission of the Ministry, paragraph 1.08)

I have discussed, below, further aspects of the Ministry's submission.

7. Discussion

Portions of the arguments advanced by the Ministry as to the implications of the disclosure of the personal information in dispute were submitted on an *in camera* basis.

The only thing that I wish to say about the *in camera* material is that most of it concerned the possible consequences of disclosure of records that are not at issue in this inquiry.

Disclosures in error and rights of access to information under the Act

The Ministry is aware that records already in the possession of the applicant state the name of the third party and the name of the applicant's father before his adoption:

This information was disclosed in error by the then Ministry of Social Services. The fact that this information has been disclosed in error does not mean that a subsequent disclosure will not constitute an unreasonable invasion of privacy. On the contrary, the error and the invasion of privacy should not be perpetuated by further disclosure. (Submission of the Ministry, paragraph 5.07)

The Ministry proceeded to discuss some of the principles established by some of my Orders, including Order No. 35-1995, March 27, 1995, and Order No. 58-1995, October 12, 1995, and concluded that a "birth mother's 'right to anonymity' shifts personal information formerly disclosed in error about the birth mother under the protection of the Act." (Submission of the Ministry, paragraph 5.10)

In Order No. 132-1996, November 20, 1996, p. 3, I agreed with a public body that section 22(2)(h) formed a basis upon which disclosure would violate the privacy of the third party:

My general view is that any identifying information about a birth mother is her personal information and to disclose it without her consent is an unreasonable invasion of her privacy under section 22 of the Act.

The Ministry relies on Order No. 132-1996 in support of its decisions to withhold the information respecting the third party. (Submission of the Ministry, paragraph 5.05) I will apply the general principle established in that Order in a way which is reasonable.

My concern is not to bring the Act into disrepute by making unrealistic decisions. Under normal circumstances, I would agree with the Ministry that the information in dispute in this inquiry should be withheld in its entirety on the basis of section 22 of the Act. However, these are not normal circumstances. This applicant has already been given some of this information by another Ministry, albeit in error. In the circumstances of this particular case, I consider this to be a relevant circumstance under section 22(2) for purposes of determining whether disclosure of that information would constitute an unreasonable invasion of the third party's privacy. While the previously released information may be personal information about a third party, it is my view that disclosing precisely the same information to the same person would not now be an unreasonable invasion of that third party's privacy.

It is reasonable, though, to refuse to disclose any further information that has not previously been disclosed and which should normally be withheld under section 22 of the Act. To do otherwise would not only compound the original error, but would result in an unreasonable invasion of the third party's personal privacy, contrary to section 22(1) of the Act. While I realize that the applicant would like access to all of the information in dispute, the fact that some information was disclosed in error does not entitle her to this additional information under the terms of the Act.

In its reply submission, the Ministry has chosen to inform the applicant that certain information is not accessible from the records in dispute, because it is not recorded. Thus she now also knows that there are no more "secrets" to be acquired that she does not already know.

Burden of proof

I find that the applicant has not met her burden of proof with regard to the information not previously disclosed.

8. Order

I find that the Ministry of Health was not required under section 22(1) of the Act to refuse to give the applicant that information in the disputed records which the then Ministry of Social Services had previously released to her. I therefore order the Ministry to give the applicant access to that information on the basis of section 58(2)(a) of the Act.

I also find that the Ministry of Health was required under section 22(1) of the Act to refuse to give the applicant the other information contained in the disputed records (i.e. the withheld information other than the information which is the subject of my section 58(2)(a) order). Under section 58(2)(c) of the Act, I therefore require the Ministry to refuse to give the applicant access to that other information.

David H. Flaherty
Commissioner

August 12, 1997