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**Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 132-1996
November 20, 1996**

INQUIRY RE: A request to the Ministry of Social Services for access to the full birth name of the applicant's deceased father

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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 August 23, 1996 under section 56 of the *Freedom of Information and Protection of Privacy Act* (the Act). This inquiry arose out of a request for review by the applicant of a decision of the Ministry of Social Services (as it was named at the time of the decision) to deny access to the full birth name of her deceased father, which was severed from his birth certificate.

The applicant originally applied to the Ministry of Social Services for access to all information pertaining to her paternal grandmother (the third party). During mediation, this was reduced to the full birth name of her father from his birth certificate, which would indicate his mother's last name.

2. Issue under review at the inquiry

The issue in this review is whether the Ministry of Social Services has correctly applied section 22 of the Act to the information in dispute.

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
- (h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant.

Under section 57 of the Act, 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 would not be an unreasonable invasion of third party's personal privacy under section 22 of the Act. In the present case, the burden under this section is on the applicant.

3. The applicant's case

The applicant applied to the Ministry for any information about her paternal grandmother (the third party), who gave the applicant's deceased father up for adoption at the time of his birth. The applicant is her father's next-of-kin. He has been dead for ten years.

With respect to the argument that disclosure of her grandmother's name would be an invasion of the grandmother's privacy, the applicant's view is that it would not be, since she has no intention of "exploiting the relationship. The truth is, she would be at least 90 years old and most likely deceased." Her interest is in genealogy.

4. The Ministry's case

The Ministry states that the only information that exists about the third party is her name, which was not available to the applicant under the *Adoption Act* which was then in effect (*Adoption Act*, R.S.B.C. 1979, c.4, repealed by *Adoption Act*, S.B.C. 1996, c. 48, s.101).

I have discussed below its submission on section 22 of the Act.

5. Discussion

Section 22(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.

The Ministry considers this section to be highly relevant:

The Third Party was an unwed mother who gave her son up for adoption in 1921. Given the negative light in which unwed mothers would have been viewed at that time, it is reasonable to expect that the Third Party kept the circumstances of her delivery and the subsequent adoption of her son confidential. It may be that the Third Party went on to marry and have a family who do not know that the Third Party had previously had a child. To release the Third Party's name now to the Applicant may unfairly damage the reputation of the Third Party, or if she is deceased, may unfairly tarnish her memory in the eyes of any surviving family. As such, the Public Body [the Ministry] submits that disclosure would be an unreasonable invasion of the Third Party's privacy and could also be an unreasonable invasion of the privacy of any family members. (Submission of the Ministry, paragraph 5.09)

The Ministry argues that I have recognized a birth mother's right to privacy in a previous Order, No. 35-1995, March 28, 1995, pp. 7, 10, 13, concerning the application of the former *Adoption Act*. (Submission of the Ministry, paragraph 5.11) The main issue in Order No. 35-1995 was the application of section 78(1) of the Act to the provisions of the *Adoption Act*. I concluded that section 78(1) had no application in that case because the *Adoption Act* did not restrict or prohibit the disclosure of adoption information in non-identifying form. I also concluded that section 22 did not restrict disclosure, because the information sought could not be linked to identifiable individuals. In the process of severing identifying information, I agree with the Ministry that I recognized the birth mother's right to privacy.

I have asserted in previous Orders that privacy rights of individuals do not automatically end when a person dies. (Submission of the Ministry, paragraph 5.16) (See Order No. 27-1994, October 24, 1994; Order No. 31-1995, January 24, 1995; Order No. 53-1995, September 18, 1995)

There is a considerable irony in the Ministry's reliance on this privacy argument, since it, and the Legislature, explicitly rejected this argument in the enactment of the revised *Adoption Act*. 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 applicant argued that disclosure would not be unreasonable invasion of the third party's privacy for the following reasons:

- disclosure would not cause any financial harm to the third party, nor would it ruin her reputation;
- the information was recorded 75 years ago;
- the third party may be deceased;
- the information does not fall under section 22(3)(a), since it does not disclose the third party's medical or psychological condition;

- no other harm could come to the third party;
- there is no intention to publish the information or use it to obtain any benefit.

The Ministry argued that disclosure would constitute an unreasonable invasion of the third party's privacy, mainly based on the factor in section 22(2)(h)--that disclosure may unfairly damage the third party's reputation.

I agree with the Ministry that the applicant in this case has not met her burden of proving that disclosure would not be an unreasonable invasion of the third party's privacy. I making this finding on the basis of section 22(2)(h) of the Act.

The new Adoption Act, effective November 4, 1996

The irony in this inquiry continues with the fact that the Ministry points out that the applicant should now be able to obtain the name of the third party under the new *Adoption Act*, if the third party is in fact deceased. (Submission, paragraphs 5.12 and 5.13, and sections 71(3) and (4) of the *Adoption Act*) However, that does not alter my determination of the application of section 22 in this case.

6. Order

I find that the head of the Ministry of Social Services was required to refuse access to information in the records in dispute under section 22 of the Act. Under section 58(2)(c), I require the Ministry to refuse access to the records requested by the applicant.

David H. Flaherty
Commissioner

November 20, 1996