

**Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 200-1997
November 28, 1997**

INQUIRY RE: A decision by the Ministry for Children and Families to deny access to third-party personal information in an adoption file

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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 September 10, 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 in which the applicant sought access to the identity of her birth father.

2. Documentation of the inquiry process

On January 17, 1997 the applicant submitted a request to the Ministry for Children and Families (the Ministry) for a copy of her adoption file and records. On June 20, 1997 the Ministry disclosed the records requested by the applicant with information regarding her birth father severed under section 22(1) of the Act.

On July 8, 1997 the applicant wrote to the Office to request a review of the decision by the Ministry to withhold information on the birth father. The Office opened a file on July 14, 1997. On August 18, 1997 the Office gave notice to both parties of the written inquiry to be held on September 10, 1997.

3. Issue under review and the burden of proof

The issue under review in this inquiry is the application of section 22(1) to the records in dispute. The relevant portion of the Act reads 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.

Under section 57(2), if the record or part of the record that the applicant is refused access to under section 22 contains personal information about a third party, it is up to the applicant to prove that the disclosure of the information would not be an unreasonable invasion of the third party's personal privacy.

4. The record in dispute

There are three pages of records in dispute setting out information about the adoption of the applicant and her maternal and paternal background. The name of her father has been severed in two locations. The information that the applicant presents below about her father comes from this record.

5. The applicant's case

The applicant is seeking access to the name of her natural father for the purpose of family history. In her submission:

I fail to recognize any threat to his personal privacy as he was killed in the Korean War prior to my birth in 1951. There are no siblings as he was an only child and his mother and father are more than likely deceased being now in their nineties. My natural father's name is his only legacy left to my two children and myself. (Submission of the Applicant, paragraph 2)

The applicant argues that "if adoption is primarily meant to serve the needs of the child, then when that child becomes an adult, his grown needs (including the need to know history and origin) should remain of paramount importance to the Ministry. As an adoptee I should be entitled to have control over my personal history the same as any other Canadian citizen." Since the Ministry gave her the name of her birth mother under the new *Adoption Act* "without concern to her personal privacy and reputation," the applicant suggests that it is "ironic" that her father's name is being withheld for that very reason. (Submission of the Applicant, paragraph 4)

The applicant points out that "Openness and honesty promote personal growth albeit sometimes with accompanied pain and discomfort on the other hand secrecy perpetuates unresolved emotions and guilt...[S]ecrecy benefits no one." (Submission of the Applicant, paragraph 6)

6. The Ministry's case

The Ministry submits that disclosure of the name of the person identified as the applicant's father would be an unreasonable invasion of his privacy. This information, it

submits, is not disclosable to her under the *Adoption Act*, R.S.B.C. 1996, c. 5 (Submission of the Ministry, paragraph 5.07)

I have presented below the Ministry's submissions on the application of various parts of section 22.

7. Discussion

The Adoption Act

Section 63 of the new *Adoption Act* provides an adopted person over the age of nineteen with the right of access to his/her original birth certificate and adoption order, provided that a disclosure veto has not been put in place by either of the birth parents. This is a permissive section with a condition attached to protect the personal privacy of birth parents who do not want their information released. The name of the "alleged" birth parent, in this case, does not appear on either of these documents but is contained in an adoption record held by the Ministry. There is no provision in the *Adoption Act* that prohibits disclosure of this information, nor is there a mechanism for such individuals to place a veto on the release of their names to protect their personal privacy.

The Application of Section 22

Since the *Adoption Act* does not address the issue raised in this inquiry, it is necessary to look to section 22 to determine whether disclosure of the information would constitute an unreasonable invasion of the natural father's personal privacy. The Ministry points out, correctly in my view, that section 22(4) does not apply.

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 ...(f): the personal information has been supplied in confidence

The Ministry relies on section 22(2)(f) on the basis that the birth mother likely supplied the name of the birth father in confidence, given the confidential nature of adoptions in 1951. (Submission of the Ministry, paragraph 5.08) I agree that the information was probably supplied in confidence. However, that is only one of the relevant factors which I must take into account in determining whether disclosure would constitute an unreasonable invasion of a third party's personal privacy. The considerations set out in section 22(2) are not exhaustive. On the facts of this case, there are other relevant considerations which, in my view, outweigh the fact that certain information was provided in confidence. In particular, I place considerable weight on the fact that the "third party" has been dead for more than forty-five years.

Section 22(2)(g): the personal information is likely to be inaccurate or unreliable

The Ministry submits that the identity of the person named as the birth father may be inaccurate or unreliable because it is “not uncommon for birth mothers to falsely name birth fathers.” (Submission of the Ministry, paragraph 5.08) In support of this submission, the Ministry filed an affidavit from the Supervisor of the Adoption Section of the Ministry (the Supervisor) who deposes that, in her experience, it is not uncommon for birth fathers to be falsely named by birth mothers. The Supervisor explains that birth mothers sometimes write letters in which they admit to falsely naming the birth father, and birth fathers sometimes deny that they are the fathers during interviews. While the Supervisor acknowledges that some denials are false, she believes that many are credible.

However, there is nothing in the adoption records which would indicate a basis for questioning the accuracy or reliability of the information concerning the birth father in this case. According to the original account of the birth mother, who is now deceased, the birth mother and father were engaged and had had a relationship of more than several years. The father was then killed in the Korean War. While I can understand, given the sensitivity of illegitimacy, that some birth mothers may develop a fictitious relationship, the depth of detail available in this adoption record concerning the father and his parents and the fact that the adoption was handled through a law firm, militate against the conclusion that the information is inaccurate or unreliable. The Ministry’s concern that the information may be inaccurate or unreliable is speculative.

I do not consider the evidence of the Supervisor concerning her experiences with other birth parents to provide a sufficient evidentiary basis to conclude that this record is not accurate or reliable under section 22(2)(g). Without some basis to question the accuracy or reliability of the specific information contained in this adoption record, I am not prepared to conclude that the personal information is likely to be inaccurate or unreliable.

Section 22(2)(h): the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant,

The Ministry is concerned that disclosure of the information in dispute may unfairly damage the reputation of the named father among “his surviving family and friends.” Details provided in the record, by the birth mother, indicate that the named father was twenty-six years old, an only child, that his parents were both about fifty in 1951, and that he had been in a relationship with the birth mother for a number of years. (Submission of the Ministry, paragraph 5.08). I consider it unlikely that there are surviving family members, or that the applicant would be able to locate any of the named father’s former friends. For these reasons, I do not agree with the Ministry that my reasoning in Order No. 132-1996, November 20, 1996, p. 3, about not disclosing the name of a birth mother is wholly applicable in this case. (Submission of the Ministry, paragraph 5.11)

The Privacy Rights of the Deceased

As both a Privacy Commissioner and a professional historian, I am especially interested in supporting the privacy rights of the deceased. The Ministry is correct that I have confirmed in a number of Orders that privacy rights do not automatically end when a person dies. See Order No. 27-1994, October 24, 1994; Order No. 53-1995, September 18, 1995; Order No. 132-1996.

Since there are many circumstances that affect how quickly the privacy rights of the deceased diminish over time, I have adopted the approach of dealing with this issue on a case by case basis. As a point of reference in the present inquiry, I note that subsection 65(6) of the *Adoption Act*, although it doesn't apply in this case, stipulates that even when a veto is filed under section 65 it only remains in effect for two years after the death of the individual who filed the veto. I also note (see Order No. 96-1996, April 8, 1996) that section 36 can provide guidance in this matter. Section 36 states:

36. The British Columbia Archives and Record Service, or the archives of a public body, may disclose personal information for archival or historical purposes if
- (a) the disclosure would not be an unreasonable invasion of personal privacy under section 22,
 - ...
 - (c) the information is about someone who has been dead for 20 or more years, or
 -

As the term "or" is used to separate the last two items listed under section 36, this section can be read to mean that only one of the listed criteria needs to be present for the section to apply.

Given that, in this case, the named individual was relatively young when he died, has likely been dead for forty-six years, there are no living siblings, the parents would be in their nineties (and therefore may not be alive) and the identities of former friends are unknown, I find that the prospects for unreasonable invasion of the privacy of the named father are extremely remote.

I find that the applicant has met her burden of proof that disclosure of the information in dispute would not be an unreasonable invasion of the privacy of her natural father.

8. Order

I find that the head of the Ministry for Children and Families is not required to refuse access to the records requested by the applicant under section 22 of the Act. Under

section 58(2)(a), I require the head of the Ministry for Children and Families to give the applicant access to the name of her “alleged” father.

David H. Flaherty
Commissioner

November 28, 1997