

**Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 307-1999
April 29, 1999**

INQUIRY RE: Refusal by the Ministry for Children and Families to provide an applicant with her father's 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 February 26, 1999 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 by the Ministry for Children and Families (the Ministry) to withhold records that an applicant had requested.

2. Documentation of the inquiry process

On May 31, 1998 the applicant submitted a request to the Ministry for "a copy of my father's birth certificate showing his name at birth." On July 10, 1998 the Ministry denied access under section 22 of the Act and responded that "the records have been reviewed and information consistent with section 22(1) and (22)(2)(h) of the Act has been removed."

On August 20, 1998 the applicant requested that my Office review the Ministry's decision. The ninety-day review period would have ended on December 14, 1998. However, the parties agreed to an extension to February 26, 1999. The Notice of Inquiry was sent to the parties on January 22, 1999, setting the inquiry for February 26, 1999.

3. Issue under review and the burden of proof

This inquiry reviews the Ministry's application of section 22 to the applicant's father's birth certificate.

The relevant parts of section 22 are 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
- ...
- (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 of the record 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 record in dispute

The record in dispute is the applicant's father's birth certificate.

5. The applicant's case

The applicant states that the Ministry denied her access to all of the information on her father's original birth certificate. She is now seeking his full birth name and believes, as his heir, that it is her right to do so.

The applicant's argument is that disclosure of the information in dispute would not be an unreasonable invasion of the privacy of her father's birth mother, since she would only receive his mother's last name, not her first.

The applicant submits that a search by the Adoption Reunion Registry "revealed that no one by the name she [her father's mother] gave was ever born in the place she specified. In fact, they found no record at all that a person by her name ever existed." The applicant suggests that it was perhaps not uncommon eighty years ago for unwed mothers to supply the authorities with a false last name in order to protect their identity in a society that did not condone pregnancy out of wedlock: "How then, can my having this last name invade the privacy of its donor?"

The applicant further suggests that her grandmother, who would be close to one hundred years old, if she is still alive, likely married at some point and changed her last name:

It is obvious to me that she never wanted to be found, and if a professional agency cannot find her or prove she ever existed, then how can I invade her privacy with the knowledge of my father's full birth name?

If the ARR [Adoption Reunion Registry] couldn't find her, how could I? It is obvious she doesn't want to be found and has made considerable effort towards that end. With all these considerations in mind, how could I even begin to invade her privacy by knowing my father's full birth name?

6. The Ministry for Children and Families' case

The Ministry points out that the information in dispute "reveals the father's full name at birth which, in turn, reveals his birth mother's last name." It has refused to disclose the information on the grounds that disclosure would constitute "an unreasonable invasion of the personal privacy of the father's birth mother," but it has released a severed copy of her father's original birth certificate.

7. Discussion

The applicant's grandmother placed the applicant's father for adoption soon after his birth. Upon his adoption, the father's name was changed by his adoptive parents. His birth certificate shows his full birth name in addition to the grandmother's full name at the time of the father's birth.

In Order No. 132-1996, November 20, 1996, I confirmed a decision by the former Ministry of Social Services to withhold from this applicant the full birth name of her deceased father. He died without knowing his birth name. This inquiry deals with a related issue.

The Ministry holds the view that the same personal information is in dispute in both Order No. 132-1996 and the current order, so that the earlier decision is fully determinative of the matter. (Submission of the Ministry, paragraphs 13, 18)

The problem in this case is that the information that the applicant is seeking, the full name of her natural father, likely includes the last name of his birth mother. In my view, the grandmother's last name is still her personal information under my interpretation and application of the Act in Order No. 132-1996.

I found in Order No. 132-1996 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." In this connection, I also hold the view that such information should not be disclosed to this applicant, whether her grandmother is alive or dead, since deceased persons have privacy rights. See Order No. 27-1994, October 24, 1994; Order No. 31-1995, January 24, 1995; and

Order No. 53-1995, September 18, 1995. I agree with the Ministry that “even if the birth mother is deceased, disclosure of information that would reveal her identity may damage her reputation in the eyes of her living family members.” (Reply Submission of the Ministry, paragraphs 2 and 3)

The applicant proposes, in the alternative, that I order disclosure to her of the real first and middle birth names of her father: “This alone would satisfy my quest for knowledge.” As the applicant did not put forward an alternative submission requesting access to her father’s first and middle names in Order 132-1996, this is a new issue which I must consider.

I have considerable sympathy with the wishes of this applicant to obtain the information in dispute but, for the most part, I am unable to assist her search, except by reconsidering the application of the Act to her birth father’s first two names. I regard the latter as the unique personal information of her father as given to him at birth by his birth mother.

The Ministry argues that disclosure of the “unusual” middle name of the father to the applicant could uniquely identify members of the applicant’s father’s birth mother’s or birth father’s extended families. Although this argument warrants serious consideration, it is speculative. I find that disclosure of the father’s middle name would not facilitate identification of family or extended family members in the particular circumstances of this inquiry, since the original events occurred in the first quarter of this century.

The Search by the Adoption Reunion Registry (ARR)

The applicant submits that the failure of the ARR to locate records of her grandmother proves that she never existed under the surname she gave at the time of birth. She also concludes, on that basis, that disclosure of the full name of her father would thus not identify his birth mother. Her presumption appears to be that use of an alias would make the name non-identifying.

The Ministry’s response is that the ARR was simply unable to locate a birth certificate for the birth mother through the Vital Statistics Department in Saskatchewan:

At the time the birth mother was born, the Province of Saskatchewan did not have a statute requiring births to be registered through the vital statistics department. Instead, births could be registered through local church parishes. [see affidavit evidence] Thus, failure to locate a birth certificate through the vital statistics department does not mean the birth mother was not born where she said she was born. (Reply Submission of the Ministry, paragraph 4)

The Ministry adds that it “has no reason to believe, in this case, that the name given by the birth mother when she gave birth was a false name.” (Reply Submission of the

Ministry, paragraph 6) Even if the birth mother had changed her name by marriage, her name used on the birth certificate is still her personal information under the Act. I agree.

The Adoption Act, R.S.B.C., c. 48

The *Adoption Act* was not in force when I issued Order No. 132-1996. Section 22(4) of the *Freedom of Information and Protection of Privacy Act* permits disclosure of personal information of a third party when an enactment of British Columbia authorizes the disclosure. Since I made a comment at that time that the applicant may be able to obtain the information in dispute under the new legislation, the Ministry's position in the present inquiry is that the *Adoption Act* "does not give the child of an adopted person automatic access to information about the adopted person or birth parents of the adopted person." (Submission of the Ministry, paragraph 24)

The crux of the Ministry's position is as follows:

Section 64 of the *Adoption Act* only provides for disclosure of the original birth certificate to the adopted person or to the birth parent named on the certificate. The *Adoption Act* does not contemplate disclosure of this document to next-of-kin such as children of the adopted person.

Therefore, in the circumstances of this case, the *Adoption Act* does not authorize disclosure to the Applicant of the birth name of her father. (Submission of the Ministry, paragraphs 29, 30)

The Ministry submits that "in most circumstances," the name or other identifying information of an adopted child, or of a birth parent, should not be disclosed, unless disclosure is pursuant to the *Adoption Act*: "Disclosure under FIPPA [the Act], when disclosure is not permitted under the *Adoption Act*, will in almost all circumstances constitute an unreasonable invasion of privacy." (Submission of the Ministry, paragraph 31)

In general, I agree with this argument. However, in this particular case, the first names given to the applicant's father at birth are not unique nor is it likely to lead to the identification of the applicant's father's birth parents. For these reasons, I cannot see that disclosure of these names would result in an unreasonable invasion of privacy.

8. Order

I find that the head of the Ministry for Children and Families was required to refuse access to the last birth name of the applicant's father under section 22 of the Act. Under section 58(2)(c), I require the Ministry to refuse access to the last name of the applicant's father.

I find that the head of the Ministry for Children and Families was not required to refuse access to the applicant's birth father's first names under section 22 of the Act.

Under section 58(2)(a), I require the Ministry to give the applicant access to her father's first and second birth names.

David H. Flaherty
Commissioner

April 29, 1999