OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
— for —
British Columbia

Order 01-37

MINISTRY OF CHILDREN AND FAMILY DEVELOPMENT

David Loukidelis, Information and Privacy Commissioner
August 9, 2001

Quicklaw Cite: [2001] B.C.I.P.C.D. No. 38
Document URL: http://www.oipcbc.org/orders/Order01-37.html
Office URL: http://www.oipcbc.org
ISSN 1198-6182

Summary: The applicant had received, under the 1995 *Adoption Act*, a copy of his birth registration, which identified a particular woman as his birth mother. Applicant then requested access to records under the Act respecting his adoption, in order to establish his aboriginal ancestry. Ministry refused to disclose the name of the applicant's putative birth father or personal information of other third parties. The applicant is not entitled to the personal information, as its disclosure would unreasonably invade the father's personal privacy. Disclosure of identifying information of birth parents almost always will unreasonably invade their personal privacy under s. 22(1). Applicant also is not entitled to personal information of other third parties compiled in connection with his adoption, as disclosure would unreasonably invade their personal privacy.

Key Words: personal information – name or other unique identifier – race or ethnic origin – unreasonable invasion of personal privacy – fair determination of rights – harm or damage to reputation.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 22(1), 22(2)(c), (d), (e) and (h), 22(3)(a), 22(4)(b); *Adoption Act*, ss. 62 and 68.

Authorities Considered: B.C.: Order No. 132-1996, [1996] B.C.I.P.C.D. No. 60; Order No. 307-1999, [1999] B.C.I.P.C.D. No. 20; Order 01-19, [2001] B.C.I.P.C.D. No. 20.

Cases Considered: *Greater Vancouver Mental Health Service Society* v. *British Columbia (Information and Privacy Commissioner)*, [1999] B.C.J. No. 198 (B.C.S.C.).

1.0 INTRODUCTION

[1] The applicant, who has some aboriginal ancestry, was adopted several decades ago by a non-aboriginal family that later broke up. After his adoptive mother re-married, he was adopted by her new husband. The applicant's childhood and youth were difficult and he has seemingly had a hard go of it for most of his life. Happily, it seems that he has, through his own strength and the support of his spouse, turned his life around.

[2] His spouse has lived for most of her adult life in the United States; her children are United States citizens (it is not clear if they live there or in Canada). She is somewhat older than the applicant and, he tells me, she wishes to retire to the United States in a few years. The applicant wishes to join her in the United States. He says United States officials have told him that the Jay Treaty, signed in 1794 between the United Kingdom and the United States, provides that native North Americans have a right of free passage between Canada and the United States. United States immigration officials have indicated to him

> … that a combination of my biological mother's information regarding her native background on the one hand, and my father's name, combined with the information about his native background, would meet the requirements under the Jay Treaty.

[3] This would, he says, automatically give him the right to work and live in the United States and to qualify for "a social security card". These rights apparently all turn on the applicant proving that he is "at least 50% Native Indian".

[4] The applicant also wishes to become a "status Indian" under the *Indian Act* of Canada. A few years ago, he wrote to the federal Department of Indian and Northern Affairs (previously known as the Department of Indian Affairs and Northern Development) and applied for status under the *Indian Act*. The Department denied the application on the basis that it had "been unable to identify you [the applicant], your birth mother, your birth mother's parents as ever having been registered as Indians". The Department also said it was not possible to confirm – based on the father's name alone – whether the father was entitled to be registered, or was registered, as an Indian. The Department had received the father's name from British Columbia "social services officials" for the purposes of the applicant's attempt to become registered under the *Indian Act*. The Department noted that only two people with that name were, at the time, "registered as" Indians and that neither could be the applicant's father because of their years of birth.

[5] The applicant wishes to find out about his ancestry for reasons beyond those just described. As he puts it, he has for years wanted to find his roots. He yearns to know more about his aboriginal heritage and to be, as he put it, "a real ('status') Native Indian". His spouse has encouraged him in this quest. In the early 1990s, he registered with the Adoption Reunion Registry in search of his birth parents, but the Registry has apparently

not been able to help. Changes to the *Adoption Act* in 1995, however, enabled the applicant to gain access to his birth registration. This is how he learned his mother's name, age, place of origin and the fact that she apparently was partly of aboriginal ancestry. In 1998, the applicant made an access request to the Ministry's predecessor and, in response, received a number of records relating to his adoption.

[6] Because the Department of Indian and Northern Affairs lost the records that he had sent for the purposes of his *Indian Act* application, last year the applicant made a new request for records under the Act for access to his records. The applicant asked the Ministry of Children and Family Development ("Ministry") to disclose information that would establish his aboriginal ancestry. In his May 28, 2000 access request, under the *Freedom of Information and Protection of Privacy Act* ("Act"), he said that he wished access to information so that he could "secure proof" that he has "50% blood of the American Indian race in order to qualify for residency in the United States." The applicant's request noted that, in response to a previous request he had made, the Ministry had refused to disclose the name of the applicant's father. The only information provided at the time was that his father was "North American Indian". The applicant's May 28, 2000, request commented, in this light, as follows:

> It seems that no one is able to give me the kind of identifying information that would enable me to find out what tribe my family members (mother, father, grandparents, etc.) or what race of Indian I might belong to; if you have any of this information I would be extremely grateful. If not, would you please provide me with the original birth certificate (showing the race of my mother and father) and the adoption certificates and anything else you might have on my parents' ancestry.

[7] In its August 24, 2000 response, the Ministry disclosed a number of records related to the applicant's adoption, from which it withheld personal information under s. 22(1) of the Act. Because the applicant already had the information, the Ministry disclosed the name of the applicant's birth mother and his birth name.

[8] The Ministry withheld the name of the applicant's putative father, certain information respecting the medical diagnosis and treatment of third parties other than the applicant or his birth parents, the names of certain third parties other than the applicant's birth parents, information respecting the personal situation of individuals other than the applicant's birth parents and the community from which the father hailed. This third-party severed information does not relate to the father's identity or to the applicant's aboriginal ancestry. With the exception of the father's and the third parties' personal information, the Ministry disclosed the balance of his adoption-related records to the applicant.

[9] Returning to the applicant's search for his father, he says that, using the records he obtained from the Ministry, he visited the communities in the area that he believed his mother had originally come from, but found no evidence of her existence. He has concluded that the name she gave at the time of his birth was a pseudonym. His

follow-up attempts, since the middle of last year, to find his birth mother's adoption or birth records have proved fruitless. The Department of Indian and Northern Affairs has again said that it cannot verify his "Indian descent".

[10] The upshot is that the applicant knows nothing about his birth mother or her family, apart from the skimpy details found in the adoption-related records that he received from the Ministry. By the same token, the only information he has about his putative father is found in a social allowance report prepared for his mother's application for social assistance, which she made soon after the applicant was born. To describe the information contained in that report as vague and minimal considerably understates the matter. The report refers to the father's previous occupation as a particular kind of labourer and says he was apparently "of Indian background". The report goes on to say that the applicant's birth mother could give no other information about the father.

[11] On September 12, 2000 the applicant requested, under s. 53 of the Act, a review of the Ministry's decision. He specifically requested a review of its decision to "withhold information relative to the name and ancestry of my birth father". Because the matter did not settle in mediation, I held a written inquiry under s. 56 of the Act. The inquiry was adjourned at the applicant's request so that he could obtain legal counsel, which he did. In addition, the United Native Nations participated in the inquiry as an intervenor.

[12] I refer below to the individual mentioned in the records as the applicant's father as "the father", but this does not imply comment on whether that person is, in fact, the applicant's father. I note, in this respect, that the applicant's submissions suggest some skepticism on his part as to the accuracy of the information.

2.0 ISSUE

[13] The only issue in this case is whether the Ministry is required, by s. 22(1) of the Act, to refuse to disclose third-party personal information to the applicant. By virtue of s. 57(2) of the Act, the applicant has the burden of establishing that the disputed information can be disclosed to him without unreasonably invading third-party personal privacy.

3.0 DISCUSSION

[14] **3.1 Outline of Section 22** – The goal of s. 22(1) is to prevent the unreasonable invasion of the personal privacy of individuals through the disclosure of personal information. As has been observed in other orders, s. 22 does not guard against all invasions of personal privacy. It is explicitly aimed at preventing only those invasions of personal privacy that would be "unreasonable" in the circumstances of a given case.

[15] It is worth repeating here the approach that should be used in assessing s. 22. In deciding whether it is required by s. 22(1) to refuse to disclose personal information to an applicant, a public body must first consider whether personal information is involved.

The Act's definition of personal information, found in Schedule 1 to the Act, provides that "personal information" means recorded information about an identifiable individual, including the individual's "name, address or telephone number" and the individual's "race, national or ethnic origin, colour, or religious or political beliefs or associations". It also includes recorded information about an individual's "health care history". Last, personal information is defined as including "anyone else's opinions" about an individual.

[16] The public body then must decide if the disclosure is deemed, by s. 22(4), not to be an unreasonable invasion of third-party personal privacy. If any of ss. 22(4)(a) through (j) applies, the information must be disclosed. If none of them applies, the public body then must consider whether any of the presumed unreasonable invasions of personal privacy created by s. 22(3) apply. If any one or more of those apply, the public body must consider all relevant circumstances – including those found in s. 22(2) – in deciding whether disclosure of the personal information would constitute an unreasonable invasion of a third-party's personal privacy. Last, even if none of the s. 22(3) presumed unreasonable invasions of personal privacy applies, the public body must still, considering all relevant circumstances, decide under s. 22(1) whether disclosure would be an unreasonable invasion of a third-party's personal privacy.

[17] The aspects of s. 22 relevant to this inquiry read as follows:

> 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
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> …
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> (c) the personal information is relevant to a fair determination of the applicant's rights,
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> (d) the disclosure will assist in researching or validating the claims, disputes or grievances of aboriginal people,
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> (e) the third party will be exposed unfairly to financial or other harm,
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> (f) the personal information has been supplied in confidence,
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> …
>
> (h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant.
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> (3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if
>
> …

> (i) the personal information indicates the third party's racial or ethnic origin, sexual orientation or religious or political beliefs or associations, or
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> …
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> (4) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if
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> …
>
> (b) there are compelling circumstances affecting anyone's health or safety and notice of disclosure is mailed to the last known address of the third party,
>
> (c) an enactment of British Columbia or Canada authorizes the disclosure,
>
> … .

[18] Before dealing with the father's personal information, I will deal with disclosure of the personal information of other third parties.

[19] **3.2 Disclosure of Other Third-Party Information** – The third-party personal information severed by the Ministry that is described above is undoubtedly personal information of the various third parties within the meaning of the Act. Some of it is about the health care history of the various third parties, while other portions of the disputed information disclose views or opinions about various third parties, in each case in connection with the applicant's adoption. It is clear from the applicant's access request, from his request for review under the Act and from his submissions in this inquiry that he is only interested in his father's name and in information about his father's aboriginal ancestry.

[20] I do not, in this light, propose to deal at any length with the personal privacy issues raised by the other third-party personal information. The applicant's submissions do not address the question of whether he can be given access to this information. Since he bears the burden of proof under s. 57(2), that is sufficient to dispose of the matter. I cannot, in any case, see any apparent basis on which that information could be disclosed to the applicant without unreasonably invading the personal privacy of those third parties.

[21] **3.3 Can the Putative Father's Information Be Disclosed?** – I have already described the applicant's reasons for seeking his father's name and the various avenues he has pursued in his effort to gain status under the *Indian Act*. At para. 51 of his affidavit, the applicant specifies the following three "main reasons" why he is seeking information about his father:

> (a) so that I may establish and be able to exercise my legal rights as an Indian both here and in the United States.

(b) so that I may establish my aboriginal roots and discover my family and social biological connections.

(c) for health reasons.

[22] The "legal rights" to which the applicant refers are set out in para. 52 of his affidavit. They can be summarized as follows:

- so that he can establish his father's right to status as an Indian under the Indian Act and thereby determine his right to status under the Indian Act;
- so he can become part of the "Indian Nation to which my ancestry would legally entitle me";
- to have access to his "legal rights under the Jay Treaty to live and work in the United States"; and
- to establish his "legal rights to tax, medical and education programs that might be available to me under the Indian Act".

[23] The applicant has no doubt that he cannot establish his "ancestral roots and gain Indian rights" unless he has his father's name (para. 54, applicant's affidavit). He notes that his attempts to trace his ancestry through his mother have failed and there is no one else alive who knows anything about his history.

[24] I will first consider the applicant's argument that compelling circumstances exist that favour disclosure of the father's personal information to him. Although the applicant did not identify this as an argument under s. 22(4)(b), this is clearly what it is.

Health Problems

[25] The applicant says that he needs his father's name because of health problems, apparently because he believes this will enable him to obtain some family medical history. He says that he has recently been diagnosed with hypoglycaemia and hepatitis C, which makes it important for him to have his family medical history. He says there are, therefore, compelling circumstances affecting his health that mean he should be given the father's personal information despite his father's privacy interests. Although he does not say so, this can only be an argument based on s. 22(4)(b) of the Act. That section deems disclosure of personal information not to be an unreasonable invasion of personal privacy if there are "compelling circumstances affecting anyone's health or safety and notice of disclosure is mailed to the last known address of the third party".

[26] The applicant says his doctor has asked him for his family medical history because his hypoglycaemia puts him at a high risk for developing Type 2 diabetes. He says that his family medical history "will be a vital component in determining treatment options". The applicant has not provided any details of these assertions or any evidence from his doctor or another medical professional to substantiate his assertions about possible diabetes. I make the same observation, with respect to the recent diagnosis of hepatitis C, about the applicant's claim that his doctor has "emphasized that it is vital" that he "attempt" to locate a family medical history.

[27] In the absence of any elaboration or medical evidence to support a claim under s. 22(4)(b), I cannot conclude that the compelling circumstances contemplated by s. 22(4)(b) are present as regards the applicant's hepatitis C, a viral disease, or his hypoglycaemia. I find that the compelling circumstances contemplated by s. 22(4)(b) have not been established as regards the applicant's health.

[28] The applicant has a son who suffered from asthma as a child. His son's doctor has, the applicant says, told him there is "a strong likelihood" the asthma will reappear in the future. The doctor is supposedly "very anxious" to have the son's family medical history. Again, the applicant does not say why a family medical history is relevant to the treatment of the son's asthma if it recurs nor has he provided any support from the son's doctor. In the absence of persuasive grounds to conclude that it applies, I find that s. 22(4)(b) does not apply in relation to the son's health.

[29] In turning to the relevant circumstances of the case, as contemplated by s. 22(2) of the Act, I note here that the applicant has not persuaded me that the health issues just discussed are properly a relevant circumstance for the purposes of s. 22(2) in this case. I also note that, as a result of the 1995 changes, s. 68 of the *Adoption Act* permits the sharing or receiving of information from birth parents, relatives of birth parents or adopted persons over 19 where compelling circumstances affecting anyone's health or safety exist. The applicant may wish to consider addressing his health information needs under s. 68, by presenting specific medical evidence to the director under the *Adoption Act* that the sharing of information, if any exists, is necessary as provided in that section.

Fair Determination of the Applicant's Rights

[30] The applicant says he "desperately" wishes to establish rights as an aboriginal person, in Canada under the *Indian Act* and the Canadian constitution and in the United States under the Jay Treaty. He says the only way he can conceivably do this is to have access to his father's name. He says that this objective is a relevant circumstance under s. 22(2)(c) of the Act, which requires the Ministry to consider whether the requested personal information "is relevant to a fair determination of the applicant's rights".

[31] The applicant acknowledges that the word "rights" in s. 22(2)(c) has been interpreted as referring to legal rights. See *Greater Vancouver Mental Health Service Society* v. *British Columbia (Information and Privacy Commissioner)*, [1999] B.C.J. No. 198 (B.C.S.C.). The applicant says the rights he seeks to establish under the *Indian Act* are legal rights for the purpose of s. 22(2)(c) and that his father's name is relevant,

indeed critical, to a fair determination of those rights. He says that his father's name is the only piece of information he can use to further pursue his quest for confirmation of his status under the *Indian Act*.

[32] There is no doubt in my mind that the determination of whether someone has status as an Indian under the *Indian Act* is a determination of that person's legal rights. I also accept that the father's name is relevant to that determination. It does not follow, however, that the disclosure of that third-party personal information to the applicant is favoured by s. 22(2)(c).

[33] The applicant has already applied for, and been refused, status under the *Indian Act*. For the purposes of that application, the province disclosed the name of the putative father, in confidence, to the Department of Indian and Northern Affairs. The applicant now raises the prospect, in argument, that the province may not have given accurate information to the Department of Indian and Northern Affairs, but there is no reason to suppose inaccurate information was given. To the extent the father's name is relevant to a fair determination of the applicant's rights, that information has already been disclosed to the agency responsible for making that determination. In this light, I cannot conclude that the relevance of the same personal information to a fair determination of the applicant's rights under the *Indian Act* is particularly weighty or compelling. The applicant argues it is also relevant that, if he can identify his paternal grandparents using his father's name, he may be able to establish *Indian Act* status through them. I have also given some weight to this under s. 22(2)(c).

[34] As for the Jay Treaty, the applicant says the disputed information will enable him to discover to which Indian band his father belonged. He says this, together with his mother's information, will enable him to gain Jay Treaty rights. As is the case with his *Indian Act* interests, I have given some weight to this relevant circumstance under s. 22(2)(c).

[35] I find that the relevant circumstance under s. 22(2)(c) favours disclosure of the disputed personal information to the applicant, although it does not favour disclosure, in the circumstances, with overwhelming force.

Interests of Aboriginal People

[36] It is appropriate to note here the substance of the submissions made by the United Native Nations ("UNN"). The UNN submission was devoted almost entirely to a discussion of the *Adoption Act* changes of a few years ago. The submission points to the difficulties faced by individuals in the applicant's position when they attempt to establish their right to status under the *Indian Act*. It is extremely difficult, the UNN says, for individuals to gain access to information about their backgrounds in order to make their case for status. The UNN says that it sees many individuals who are in the same position as the applicant.

[37] Taking a similar perspective, the applicant argues that, for the purposes of s. 22(2)(d), disclosure of his father's name will "assist in researching or validating the claims, disputes, or grievances of aboriginal people". He says there is little question that he is "an aboriginal" and that the personal information will assist him in pursuing his claims under the Canadian constitution, the Jay Treaty and the *Indian Act*.

[38] In my view, the Legislature intended s. 22(2)(d) to refer to "people" in a collective sense, i.e., to any people in the sense of a First Nation, Indian band under the *Indian Act* or other distinct aboriginal people. The section is aimed at the claims, disputes or grievances of peoples, not individuals. The applicant's s. 22(2)(d) argument requires me, in effect, to accept that there is an overlap between ss. 22(2)(c) and (d) that I do not consider exists. I therefore find that s. 22(2)(d) is not a relevant circumstance in this case.

[39] The submissions of the UNN and the applicant speak to the applicant's interest, as an aboriginal individual, in getting the disputed information to further his claims. As I noted earlier, ss. 22(2)(a) through (h) do not exhaust the list of relevant circumstances. I am not, however, inclined to think that the applicant's status as an aboriginal person and the aboriginal character of his claims or rights are relevant circumstances for the purposes of s. 22(2). This view is based on the observation that, in enacting s. 22(2), the Legislature clearly turned its mind to the interests of aboriginal peoples, but did not do so in a way that addresses the individual interests asserted by the applicant. Section 22(2)(c) deals with the applicant's individual interests. As I note below, s. 62 of the *Adoption Act* now addresses the interests of individual aboriginal adoptees in discovering their roots.

Unfair Exposure to Harm or Damage to Reputation

[40] According to the Ministry, disclosure of the father's name could unfairly expose him, or any family he has since had, to harm within the meaning of s. 22(2)(e). It also argues that s. 22(2)(h) is relevant, since the disclosure of the father's name may, it argues, unfairly damage his reputation. In this respect, the Ministry points out there is some uncertainty as to whether the father is, in fact, the applicant's father and whether the applicant's birth mother gave inaccurate information about the applicant's paternity. Paragraph 5.07 of the Ministry's initial submission reads as follows:

> The Public Body submits that a relevant consideration in this case is the context in which the Third Party's name appears, i.e. that the Third Party is the putative father of the Applicant. One must consider the consequences of disclosing the Information to the Applicant. It may be that the Third Party went on to marry and have a family, who may not know that the Third Party may have previously fathered a child. Disclosure of the Information to the Applicant may unfairly expose the Third Party and his family members to mental or other harm and may unfairly damage the reputation of the Third Party. Disclosure of such information could harm any family members of the Third Party, including any children, parents

> and/or a spouse, in the event that they were unaware that the Third Party may have previously fathered a child. Such harm may come in the form of serious mental distress. Disclosure of the Information could also result in the straining, or worse, of the Third party's relationships with such persons. The Public Body submits that the relevance of paragraphs 22(c)(e) and 22(2)(h) in this inquiry tips the balance in favour of protecting third party personal privacy.

[41] The Ministry says it has been unable to verify, based on a review of its own records, that the father is, in fact, the birth father of the applicant. In this context, it says, one must conclude that exposing the father to needless embarrassment, anxiety or emotional or mental stress because he may have been inaccurately identified as the applicant's father also must be considered in deciding whether disclosure is proper.

[42] It is important to remember that s. 22(2)(e) speaks to unfair exposure to financial or other harm. I have, in other cases, expressed the view that "harm" for the purpose of s. 22(2)(e) consists of serious mental distress or anguish or harassment. See, for example, Order 01-19, [2001] B.C.I.P.C.D. No. 20. Although I have no evidence before me as to the father's current personal situation – we do not even know if he is alive – it is appropriate to approach this situation on the basis that disclosure of this kind of information could expose the father or any family he may have to "harm" in the sense of sufficiently grave mental stress or anguish. Although a reunion between an adopted child and his biological parents can be a positive event, it is equally broadly known and accepted that such reunions can instead cause dissension, strife and anguish. It is not necessary for me to find or assume, for the purposes of this case, that a reunion or contact between the applicant and his father (or any family his father may have) would be positive or negative. It is sufficient that disclosure of the father's information would at least expose the father and any family to harm of a kind contemplated by s. 22(2)(e). It is the exposure to harm, not the likelihood of harm that matters. For this reason, I consider that s. 22(2)(e) is a relevant circumstance in this case and that it favours the view that disclosure would unreasonably invade the father's personal privacy.

[43] I consider the Ministry's position on unfair damage to reputation under s. 22(2)(h) to be somewhat more speculative. It may be that a man as old as the father would now be would consider his reputation unfairly damaged if the applicant correctly or wrongly identified him as his father. But that is not necessarily the case today, given how attitudes have changed, for the most part, towards fathering children outside marriage or a similar relationship. I conclude that disclosure "may unfairly damage the reputation" of the father if he turns out, in fact, not to be the father. Thus, s. 22(2)(h) favours the conclusion that disclosure would unreasonably invade personal privacy. I should say that, although both circumstances operate here, the s. 22(2)(h) circumstance is of less weight than that in s. 22(2)(e).

Would Disclosure Unreasonably Invade Personal Privacy?

[44] My predecessor consistently decided that disclosure of the names of the birth parents of adopted individuals would unreasonably invade the personal privacy of the

birth parents. In Order No. 132-1996, [1996] B.C.I.P.C.D. No. 60 – his first order dealing with the merits of such a request – David Flaherty expressed the view that, as a general proposition, disclosure of any identifying information about a birth mother without her consent would unreasonably invade her personal privacy for the purposes of s. 22 of the Act. In Order No. 307-1999, [1999] B.C.I.P.C.D. No. 20, at p. 5, he agreed that, generally speaking, disclosure of a birth parent's name, without consent, would in almost all circumstances be an unreasonable invasion of the birth parent's personal privacy. In the latter case, he ordered disclosure of the first and middle names given to the applicant's father at birth, since they were not "likely to lead to the identification of the applicant's father's birth parents". It is implicit in this view that my predecessor considered it would unreasonably invade the personal privacy of the applicant's father's birth parents to disclose any information that would identify them.

[45] The applicant's interest in identifying the man he believes may be his birth father is motivated by more than financial or legal interests. He wishes to find his roots. It would not be surprising if the applicant's financial and legal reasons for seeking his father's identity were shared by many adoptees. Nor would it be surprising if his desire to discover his roots were shared by most, if not all, adoptees. Perhaps for these reasons, when the Legislature enacted a new *Adoption Act* in 1995, it provided for more openness and access to information about biological relations through a variety of measures in Part 5 of that Act. Using these mechanisms, the applicant has obtained a copy of his birth registration and has registered with the Adoption Reunion Registry, although neither avenue has given him the information he seeks.

[46] As regards the applicant's wish to find out about his aboriginal ancestry, the Legislature recognized the special situation of aboriginal persons who have been adopted out of their communities. Section 62 of the *Adoption Act* allows disclosure, in certain circumstances, of identifying information of an "aboriginal child" so that he or she can be contacted by a representative of a band or an aboriginal community.

[47] This recent attempt by the Legislature to account for the interests and needs of aboriginal peoples and individuals may not assist the applicant directly. But despite my sympathy for the applicant's plight – and acknowledging the aboriginal perspective that has been brought to bear here (as articulated in the applicant's and the UNN's submissions) – I agree with my predecessor's observation in Order No. 307-1999, that disclosure of identifying information of birth parents under the Act will, in almost all cases, unreasonably invade their personal privacy. After careful and sympathetic assessment of this case, I am driven to the conclusion that disclosure of the putative father's personal information would be an unreasonable invasion of his personal privacy. I acknowledge that s. 22(2)(c) favours disclosure, but am of the view that ss. 22(2)(e) and (h) outweigh it and favour non-disclosure in the circumstances of this case. As I have discussed above, the applicant has already attempted to gain status under the *Indian Act*

using his putative father's name. His wish to gain rights under that legislation, and under the Jay Treaty, is relevant, but this does not overcome the fact that ss. 22(2)(e) and (h) favour the conclusion that disclosure would unreasonably invade the father's personal privacy. I am not persuaded that the interests of the father (or any family he may have had) contemplated by those provisions are overcome here. I find that the Ministry is required by s. 22(1) of the Act to refuse to disclose the father's personal information to the applicant.

4.0 CONCLUSION

[48] For the reasons given above, under s. 58(2)(c) of the Act, I require the Ministry to refuse to disclose all of the disputed personal information to the applicant.

August 9, 2001

ORIGINAL SIGNED BY

David Loukidelis
Information and Privacy Commissioner
for British Columbia