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

Order 02-27

PUBLIC GUARDIAN AND TRUSTEE OF BRITISH COLUMBIA

David Loukidelis, Information and Privacy Commissioner
June 11, 2002

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Summary: Applicant requested, on behalf of client, names and addresses of 17 heirs at law to an estate. PGT found to have properly refused access under s. 22.

Key Words: personal information – unreasonable invasion of privacy – financial information – mailing lists – solicitation – public scrutiny – supplied in confidence.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 22(1), 22(2)(a) & (f), 22(3)(f) & (j).

Authorities Considered: B.C.: Order No. 132-1996, [1996] B.C.I.P.C.D. No. 60; Order No. 181-1997, [1997] B.C.I.P.C.D. No. 42; Order 01-53, [2001] B.C.I.P.C.D. No. 56; Order 02-20, [2002] B.C.I.P.C.D. No. 20; Order 02-26, [2002] B.C.I.P.C.D. No. 26.

1.0 INTRODUCTION

[1] The applicant in this case is a researcher. He made a request, on a client's behalf, to the Public Guardian and Trustee of British Columbia ("PGT"), under the *Freedom of Information and Protection of Privacy Act* ("Act"), for access to a record of the names and addresses of the 17 "heirs-at-law" of a named individual. In his request, the applicant said such information is normally available from probate files. In this case, he acknowledged, the information was not available in this way, since the PGT had, in order to reduce the burden of administering the estate, not filed the relevant materials with the Supreme Court of British Columbia. The applicant said neither he nor his client wanted the information for solicitation purposes or to use for a mailing list. He argued it would not, therefore, be an unreasonable invasion of personal privacy for the PGT to disclose the requested information, such that s. 22 of the Act does not apply.

[2] The PGT responded by refusing access to the information under ss. 22 and 22(2)(f) of the Act, saying it had no way to confirm the client's intended use of the information. The applicant requested a review of this decision, under Part 5 of the Act, arguing that the PGT sometimes makes mistakes identifying heirs-at-law and had done so with one heir in this case, an eighteenth heir. The "publication of the names and addresses of heirs-at-law is the only means by which potential heirs or other interested parties can review the operations of the Public Guardian and Trustee", he wrote. He also suggested that "public review of the names and addresses of heirs-at-law can quickly disabuse those who believe an estate was administered incorrectly". In a follow-up letter to my Office, however, the applicant said his client wanted the information for genealogical purposes.

[3] Because mediation efforts did not succeed, I held a written inquiry under s. 56 of the Act.

2.0 ISSUE

[4] The only issue I have to determine in this case is whether the PGT is required by s. 22 of the Act to refuse to disclose the requested records to the applicant. Under s. 57(2) of the Act, the applicant has the burden of proving that disclosure of the disputed records would not unreasonably invade the personal privacy of the third parties.

3.0 DISCUSSION

[5] **3.1 Inclusion of Mediation Material** – Much of the applicant's initial submission refers to, and comments on, opinions and comments of the Portfolio Officer in this Office who handled the applicant's request for review. It therefore constitutes material related to mediation. This Office's published policies state that parties are not to include such material without the consent of the other parties to the inquiry. The PGT said in its reply that it did not object to the inclusion of this material, as it supports the PGT's position. I have referred to this material, but it has not formed a basis for my decision, since much of it has little bearing on the issues before me.

[6] **3.2 Personal Information** – Section 22 requires a public body to withhold personal information where its disclosure would be an unreasonable invasion of a third party's privacy. The relevant parts of s. 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
>
> (a) the disclosure is desirable for the purpose of subjecting the activities of the government of British Columbia or a public body to public scrutiny,
>
> …
>
> (f) the personal information has been supplied in confidence,
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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
>
> …
>
> (f) the personal information describes the third party's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness,
>
> …
>
> (j) the personal information consists of the third party's name, address, or telephone number and is to be used for mailing lists or solicitations by telephone or other means.

[7] I have discussed the application of s. 22 a number of times – see, for example, paras. 22-24 of Order 01-53, [2001] B.C.I.P.C.D. No. 56 – and will not repeat that discussion here. I have applied those principles in this case.

[8] There is no doubt that the requested records contain third-party personal information. Before determining if disclosure of this information to the applicant, and ultimately to his client, would be an unreasonable invasion of third-party privacy, I will set out some useful background to the dispute.

[9] **3.3 PGT's Role in Administering Estates** – At p. 1 of its initial submission, the PGT provides the following background on the steps it takes in applying for letters probate or letters of administration when administering an estate:

> 1. The Public Guardian and Trustee of British Columbia ("PGT") administers the estates of deceased persons as either executor, or as administrator where the next of kin ("Heirs") are unwilling or unable to administer or where the Heirs are not known.
>
> 2. When administering an estate, the PGT is subject to substantially the same laws as any private executor or administrator. As Administrator, the PGT secures assets, obtains authority from the court, realizes assets, pays debts, and determines the lawful Heirs to the estate. When applying for Grant of

Letters Probate or Administration, the PGT is required to file with the court an affidavit which discloses certain information about the deceased and his/her assets, debts and the Heirs to the estate. Once filed with the court, this information becomes public record.

3. When an individual dies intestate, the administrator is required by law to distribute the estate to the lawful Heirs pursuant to the *Estate Administration Act*. The PGT makes all reasonable efforts to identify and locate the Heirs to an estate prior to applying to the court for a Grant. However, it can take several years to identify and locate the Heirs to an estate. Accordingly, in situations where the PGT is unable to identify and locate the Heirs within a reasonable period of time after death, the PGT files the court documents indicating either that the Heirs are not known or disclosing the Heirs that are known to the best of the PGT's knowledge and belief at that time.

4. After the PGT obtains a Grant of Letters Probate or Administration, the PGT continues to search for Heirs. The information disclosed in the affidavit filed with the court may change in that the Heirs are identified or the Heirs listed are incorrect because the presumed Heirs have predeceased, disclaimed their interest, been unable to prove their relationship to the deceased, or Heirs with a closer familial relationship to the deceased have been discovered.

5. There is no requirement at law for the PGT or any administrator to file a subsequent affidavit or further documentation with the court in the event the names and/or addresses of the Heirs change after the filing of the original Affidavit. The administrator is required by the *Estate Administration Act* to distribute the estate to the lawful Heirs and if the administrator distributes to incorrect Heirs or fails to include an Heir, the disentitled Heir may bring a claim against the administrator.

6. In searching for Heirs, the PGT uses various sources to gather information – the deceased's own personal papers, government agencies, vital statistics offices, genealogists, Heir tracers, and foreign embassies and consulates. The PGT is able to obtain confidential information and documents from various sources on the basis that the PGT is the personal representative of a person who is related to the heir for whom we require documentation. The PGT also obtains confidential information from other government or official agencies as legislation governing those agencies authorizes release of information to other government agencies. This information is generally released to the PGT on the understanding that the information and documentation will be held in strict confidence by the PGT and used only for the purposes of determining Heirship. For example, in order to obtain documents from the Ontario Vital Statistics office, the PGT has signed an Oath of Secrecy in which he "solemnly swear that I will hold secret and will not disclose to any person any information given to me from the records in the Registrar General's Office or obtained from those records by reason of my access thereto except information required in the performance of the duties in my office or information required by a court of law for the purposes of an action, prosecution or other proceeding." (Copy attached)

> 7. Once the PGT is able to identify Heirs, the PGT also writes directly to the Heirs and asks that they provide personal documentation to the PGT in order to establish their identity as an Heir to the estate.
>
> 8. All documentation and information compiled by the PGT for a particular estate is used solely for the purpose of determining the lawful Heirs to the estate. Once the Heirs have been determined, the estate is distributed and the file closed. This information is not compiled for any public purpose and, in particular, is not intended to be a source for genealogists and other members of the public to assist in genealogical research.
>
> 9. The PGT is not the primary holder of any original documentation or information regarding the deceased's family tree and the Heirs to the estate. All original information and documentation is held by other government agencies and sources, vital statistics offices, church records, foreign embassies or consulates, etc. in various countries. These agencies all have their own legislation regarding who is able to access the information held. Should any member of the public wish to receive this information, the request should be directed to these primary agencies. If the information is released from the PGT records, the PGT may no longer be entrusted to receive it from these agencies. If that happens, the PGT would not be able to establish the Heirs to our estates.

[10] The PGT says the deceased individual whose heirs are of interest to the applicant's client died intestate in 1981 and that the PGT administered the estate. The only heir of which the PGT was initially aware was the deceased's husband, who later disclaimed any interest in the estate. The PGT says it conducted research over the next few years to locate other heirs and, in 1998, distributed the estate among the 17 heirs it had identified, who were all first cousins of the deceased.

[11] The PGT describes an exchange of correspondence it had in 1999 and 2000 regarding the estate, first with the applicant's client and later with the applicant. The PGT says it provided the applicant with copies of the estate documents it had filed in court as a courtesy, as they were not available from the court or the British Columbia Archives and Records Service. Among other things, the PGT says, the applicant requested the names and addresses of the deceased's heirs, saying his client wanted the information for genealogical purposes.

[12] While an heir to an estate is entitled to certain information about the estate, the PGT says, this is not such a case. The client is not alleging that he is an heir to the estate. By contrast, the PGT argues, a member of the general public is not entitled to personal information about a deceased or her heirs from private executors or administrators. Why should it be any different in this case, it continues, simply because the administrator, the PGT, happens to be a public body under the Act? This assertion overlooks the fact that the PGT is covered by the Act, which puts it in a different situation as compared to

private executors or administrators. This is not to say, of course, that the PGT is obliged to disclose the requested information. But the analysis of whether disclosure is required must be conducted in this case under s. 22.

[13] **3.4 Presumed Unreasonable Invasions of Privacy** – The parties address two aspects of s. 22(3) in their submissions and I will now deal with them in turn.

Financial information

[14] The PGT argues that disclosure of the names and addresses of the 17 heirs would implicitly reveal their financial information, as contemplated by s. 22(3)(f), in that the information would disclose the fact that they are heirs to an estate and thus have inherited money. By contrast, the applicant suggests that revealing a person's status as an heir to an estate does not mean that the person is a beneficiary. Heirs can and do refuse money to which they are entitled. The PGT counters this by saying it is rare for heirs to disclaim any interest in an estate. As such, it says, one would normally assume that an heir has inherited money. Moreover, the PGT argues, disclosure of the heirs' names would disclose the fact of a blood or adoptive relationship with the deceased, disclosure of which would be an unreasonable invasion of the heirs' and the deceased's privacy.

[15] The applicant has already received documents that the PGT filed in court in support of its application for letters of administration of the deceased's estate. These records include an inventory of the estate's assets and liabilities. The applicant also knows from a letter the PGT sent him that the 17 heirs were first cousins of the deceased. Nevertheless, I agree that disclosure of the heirs' names in this context would reveal that they were beneficiaries of an estate and therefore almost certainly inherited money. In my view, therefore, the presumed unreasonable invasion of personal privacy in s. 22(3)(f) applies here.

Mailing lists and solicitation

[16] The applicant's ostensible reason for requesting the disputed personal information is for his client's genealogical research. He says his client has no intention of using the information for mailing list or solicitation purposes. The PGT argues it cannot confirm the applicant's intended use of the information. It appears the PGT considers this is sufficient for s. 22(3)(j) to apply, or considers that the possibility of its application cannot be discounted. The latter position does not advance the PGT's argument.

[17] In my view, solicitation for the purposes of s. 22(3)(j) generally will involve an approach to someone in order to enlist that person's support for something or in order to sell something to that person. See Order 02-20, [2002] B.C.I.P.C.D. No. 20, for example, where an applicant's intended solicitation of donations, and other forms of support, for a political cause triggered s. 22(3)(j). It would not necessarily be "solicitation" within the meaning of s. 22(3)(j) if the applicant's client were to approach the 17 heirs for genealogical information only. I am, however, persuaded that such a use of the disputed

personal information would be for a "mailing list", however innocuous the purpose of the mailing might be. The applicant does not explain what his client means by wanting the information for genealogical purposes. It seems unlikely, however, that the client would not attempt to contact the heirs, particularly since the request includes their addresses. I therefore conclude that s. 22(3)(j) applies in this case.

[18] I will note here, in passing, that although neither case dealt with s. 22(3)(j) directly, my predecessor dealt with the genealogy argument in Order No. 132-1996, [1996] B.C.I.P.C.D. No. 60, and Order No. 181-1997, [1997] B.C.I.P.C.D. No. 42, and was unmoved by it in both cases. He found in the first case that s. 22 applied and, for reasons that had nothing to do with genealogical research, that s. 22 did not apply in the second.

[19] **3.5 Relevant Circumstances** – Both parties have, as contemplated by s. 22(2), provided argument on the relevant circumstances in this case.

Scrutiny of the PGT

[20] The applicant suggests that s. 22(2)(a) applies. His only ground for this argument is the nearly 17 years it appears to have taken the PGT to trace the deceased's heirs. The PGT rejects the applicant's suggestion, saying it is only accountable to the heirs at law to an estate, such that s. 22(2)(a) does not apply. The heirs in this case have all received an accounting of the estate, it says, and have approved the accounts and the PGT's administration of the estate. As the applicant is not an heir, the PGT argues, he is not entitled to such information.

[21] Despite the PGT's arguments, it must be remembered that one of the Act's purposes is to make public bodies more accountable to the public. The fact that the heirs have been paid and have approved the accounts, and that the applicant is not an heir, is not enough. I agree with the PGT, however, that s. 22(2)(a) does not apply in this case. The applicant's client is apparently not alleging that he has been overlooked as an heir to the deceased's estate. Aside from the suggestion that the PGT took too long to trace the heirs in this case – an assertion that does not, in my view, translate into a s. 22(2)(a) argument here – the applicant has offered no basis for concluding that disclosure of the names and addresses of the third parties is desirable in order to subject the PGT's actions to public scrutiny. Section 22(2)(a) is not a relevant circumstance here.

Personal information supplied in confidence

[22] The PGT says it obtained the information on the 17 heirs in confidence from a variety of sources, including vital statistics offices. It did not compile this information for genealogical purposes, it argues, and the applicant should not be able to circumvent legislation governing access to vital statistics information by obtaining it from the PGT. Moreover, the heirs supplied the information on their relationship to the deceased in confidence, and the PGT tells heirs it will use such information only to prove a

relationship. It supports this argument by providing a copy of an oath of secrecy signed by the Public Guardian and Trustee, in which he swears he will keep secret any information he obtains from the Ontario vital statistics office, except in the performance of his duties or in a court action. The PGT has provided no other evidence of the confidential conditions under which it gathers information, such as letters to or from potential heirs or other organizations, legislative confidentiality provisions or PGT policies. Nor has it provided affidavit evidence from PGT staff responsible for locating heirs on the PGT's practices in gathering personal information.

[23] The applicant points out that the PGT may disclose the names and addresses of heirs when it files an affidavit in court. Heirs can therefore have no reasonable expectation of privacy, he argues. The Ontario oath of secrecy also provides for this, he points out.

[24] As with Order 02-26, [2002] B.C.I.P.C.D. No. 26, which also involved the PGT as public body, the case for s. 22(2)(f) is not as strong as it could be. However, I accept that, in these cases, the PGT gathers, in confidence, information on heirs and their relationship to deceased individuals whose estates they administer. Section 22(2)(f) is therefore a relevant circumstance favouring withholding the requested information.

The applicant's motives

[25] While an applicant's motives for making an access request are generally not relevant, they may be relevant in some cases. In cases involving personal information, for example, an applicant's intended use of the information may be a factor in determining if disclosure would result in an unreasonable invasion of third-party privacy. The view that an applicant's intended use of personal information may be a relevant circumstance is consistent with s. 22(3)(j), which raises a presumed unreasonable invasion of personal privacy where an applicant seeks personal information for solicitation purposes.

[26] In this case, the applicant's motives for requesting the information are not entirely clear. On the one hand, he says his client wants the information for genealogical purposes. On the other hand, there are indications that his client may wish to find out if he is an heir. For example, at para. 4 of his reply submission, the applicant says it is difficult for "all but the most dedicated and/or wealthy individuals to determine if they are disentitled Heirs or if the estate has been distributed to incorrect heirs".

[27] If the applicant's client wishes to make a claim to the deceased's estate, the applicant has not explained how the names and addresses of the 17 heirs would assist him in doing this. The client is free to contact the PGT if he feels he should have had a share in the estate. Accordingly, if the applicant's request is motivated by the client's desire to share in the estate, I do not consider that, as regards the third-party personal information he is seeking, his desire for a share of the estate is a relevant circumstance in this case, under s. 22(2)(c) or otherwise.

[28] For the reasons given above, I find that disclosure of the requested information is presumed to be an unreasonable invasion of the third parties' privacy and that the relevant circumstances favour withholding that information. I find that the applicant has not met the burden of proof and that s. 22 requires the PGT to withhold the records in dispute.

4.0 CONCLUSION

[28] For the reasons given above, under s. 58(2)(c) of the Act, I require the PGT to refuse access to the information it has withheld from the applicant under s. 22 of the Act.

June 11, 2002

ORIGINAL SIGNED BY

David Loukidelis
Information and Privacy Commissioner
for British Columbia