

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2021-43

November 15, 2021

CHILDREN’S SERVICES

Case File Number 008372

Office URL: www.oipc.ab.ca

Summary: The Applicant, which consists of the estate of a deceased person and the mother of the deceased person, made an access request under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) to Children’s Services (the Public Body). The Applicant requested a file to assist it to determine beneficiaries and to determine whether it should pursue litigation.

The Public Body refused the access request on the basis that the requested file did not contain “testamentary wishes”. It applied section 17 of the FOIP Act to withhold the file from the Applicant. It also relied on section 126.1 of the *Child, Youth, and Family Enhancement Act* to withhold the identities of reporters from the Applicant.

The Adjudicator found that the request for records was an exercise of a right or power of the deceased under the FOIP Act and found that section 17 of the FOIP Act could not be applied to withhold the personal information of the deceased or her mother, given their status as applicants.

The Adjudicator confirmed the decision of the Public Body to sever the personally identifying information of the deceased’s siblings and some other third parties from the records.

The Adjudicator confirmed the decision of the Public Body to sever information that would serve to identify a reporter from the records.

The Adjudicator ordered the Public Body to disclose the remaining information in the file.

Statutes Cited: **AB:** *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 2, 6, 17, 27, 72, 84; *Estate Administration Act*, S.A. 2014, c. E-12.5, s. 1; *Child, Youth and Family Enhancement Act*, R.S.A. 2000, c. C-12, ss. 126, 126.1

Authorities Cited: **AB:** Order H2018-01 **ON:** Order MO-2137

I. BACKGROUND

[para 1] On September 13, 2016, Jones J. of the Court of Queen's Bench appointed the Applicant as the administrator of her daughter's estate. The Applicant's daughter died intestate. The concern of the estate is that a family member whose criminal actions may have contributed to her death will inherit a portion of the estate.

[para 2] The estate requested a file from Children's Services (the Public Body) in order to obtain evidence to present to the Court to support its position.

[para 3] On May 31, 2017, the Public Body refused to give the Applicant access to the requested file. It stated:

It is my understanding you are seeking access to, "All records concerning [the name of the Applicant's deceased daughter] in order to settle a dispute regarding beneficiaries to her estate"

Thank you for providing a copy of the Court of Queen's Bench, Order of Administration. As we discussed yesterday during our brief telephone discussion the Information and Privacy Office does not have enough information at this time to begin processing your request. Section 84(1)(a) of *the Act* stipulates:

84(1) Any right or power conferred on an individual by this Act may be exercised (a) if the individual is deceased, by the individual's personal representative if the exercise of the right or power relates to the administration of an individual's estate.

It is our opinion that based on section 84(1)(a) of the Act, the burden of proof rests with you the Applicant in order to satisfy the requirement the records being requested are related to and are necessary to enable you to exercise the right or power to administer the estate.

When we spoke by telephone you were unable establish that the records you requested are necessary for the administration of the estate. Please immediately provide a written response to assist us in understanding how the deceased child intervention record is necessary for you to administer her estate. When we receive your written response we will set up and begin processing your request as of that date assuming you have established that the records requested are necessary for you to administer the estate.

[para 4] On June 8, 2017, the Applicant provided a detailed explanation of the estate's purpose in requesting the file, including the kinds of information the Applicant hoped to obtain and the reasons for seeking it. The Applicant clarified:

We are looking for just the statements made by [the deceased] in this document and respect the rights of privacy of the other three siblings in what they said in their false reporting, so it is fine to

have their statements blanked out as our only concern would be with the words and statements of [the deceased].

[...]

Secondly, since the biological father had been incarcerated for crimes against [the deceased] when she was a child, the requested document from your office will show that:

1. [The deceased] was either in contact or not in contact with her biological father during the time of her false reporting to Social Services.
2. The mental health state of [the deceased] at the age of 22.

Why is this important to the case? I need to show or prove that the ongoing mental health issues that [the deceased] had were stemming from the original crimes against her. This would be seen by documents showing the mental health state she was in over the years which included her false reporting to Social Services. The need to show her mental health over various periods of time throughout her life until her death will give the Justice the ability to determine if the biological father would be benefitting from his crimes by having any part in her estate as a beneficiary. Any information regarding [the deceased's] physical, mental, emotional state over the years as well as her social relationship dynamics and family situation would be helpful.

[...]

I also need this document evidence to submit to the Justice in Surrogate Court to show and verify that this period of her life of her falsely reporting to Social Services actually occurred.

[para 5] On June 22, 2017, the Public Body wrote to the Applicant to inform her that it considered that section 84 authorized the Applicant to request some of the information in the file.

[para 6] On July 31, 2017, the Public Body refused to provide the requested information stating:

I have reviewed the record and unfortunately, access to all the information which you have requested is denied under section 17. Section 17 states that the head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of that individual's personal privacy. In conducting my review I was unable to find information that could be interpreted to be the individual's testamentary wishes while she was alive. Further, I did not find any other information the disclosure of which would outweigh the deceased individual's right to privacy.

The Applicant requested review by the Commissioner of the Public Body's application of section 17 to the records.

[para 7] The Commissioner delegated her authority to conduct the inquiry to me.

The Records at Issue

[para 8] In its initial submissions, the Public Body stated:

On May 23, 2017, the People, Families and Communities Sector (PFCS) FOIP Office, Service Alberta, then called the Information and Privacy Office (IPO) and part of the former Ministry of Human Services, received a personal request for information on behalf of Children's Services (the

Public Body) under the *Freedom of Information and Protection of Privacy Act* (the Act). The applicant requested:

"All records concerning [the deceased] in order to settle a dispute regarding beneficiaries to her estate. This matter is before the court of Queen's Bench in Calgary." Time Period: December 2009 – January 2010.

Further clarification was requested and provided by the Applicant June 8, 2017.

Access to the records was requested pursuant to section 84(1) of the FOIP Act which provides:

84(1) Any right or power conferred on an individual by this Act may be exercised

(a) if the individual is deceased, by the individual's personal representative if the exercise of the right or power relates to the administration of the individual's estate...

The Public Body performed a thorough search of all records dating back to 1996. Only records from 1996 (24 records) were found to be responsive.

On July 31, 2017 The Public Body responded to the access requested and denied access to the responsive records pursuant to section 17(1) of the Act (unreasonable invasion of third party(s) privacy).

On February 22, 2018 the Applicant requested the Office of the Information and Privacy Commissioner (OIPC) review the Public Body's decision to decline access to the responsive records.

The OIPC in conversation with the Applicant indicated that the records located by the Public Body from 1996 were not the records the Applicant was looking to gain access to. The Applicant was looking for the deceased's details in a report that had been made to Children's Services back in 2009. The OIPC requested the Public Body conduct another search for responsive records based on this information.

The Public Body conducted another search and review of Children's Services records to determine whether there was any information of a testamentary nature in the records that would assist the Applicant in her role as a personal representative to settle the deceased's estate under section 84(1)(a) of the Act. The Public Body did not find any information that would be considered testamentary wishes of the deceased when she was alive, or information that could reasonably be interpreted to assist in the administration of the estate. To disclose the deceased's personal information in the records or other third parties would be an unreasonable invasion of their personal privacy.

[para 9] In my letter of July 12, 2021, I informed the parties that the records at issue were not from 1996 but 2009 – 2011. I said:

I acknowledge that the Public Body erroneously stated in its initial submissions that the records for the inquiry were from 1996. This is an error in the Public Body's submissions. The records at issue, which I have been provided, are not from 1996, but 2009 – 2011.

[para 10] I then asked the Public Body questions regarding its application of section 27(1)(a) to information in the records. The Public Body responded:

Under CFEA - Confidentiality 126(1) The Minister and any person employed or assisting in the administration of this Act, including an agency providing services on behalf of a director,

may disclose or communicate personal information that comes to the Minister's or person's or agency's attention under this Act only in accordance with the Freedom of Information and Protection of Privacy Act. The PB submits that the records were severed in accordance with FOIP Act under section 17.

This request was responded to four years ago and the Senior FOIP Advisor, no longer with the PB, reviewed all records and only found 24 records from 2009 that may be responsive to the administration of the estate. Section 17 was applied to withhold the records. In Review by the OIPC, the Senior FOIP Advisor was asked to review all records of the Deceased which included the Deceased's Child intervention file and Child intervention files of siblings which may exist and may include personal information of the Deceased. In the opinion of the Senior FOIP Advisor at that time, no further records were found relating to the administration of the estate.

The PB is under the understanding now that the Inquiry is including all records. If the Inquiry concludes that the records be processed again to provide the Personal Information of the Deceased, severing under sections 17 and 27(1)(a) of the FOIP Act would be applied to protect the personal information of third parties and the identity of reporter(s) as defined under section 126.1(1) of the *CYFEA*.

[para 11] The records at issue that were provided for review by this office are 2 files containing a total of 308 pages, not 24 pages, of records. The Public Body submitted these records for use in mediation and adjudication of the Applicant's requests for review and inquiry. These records were labelled by the Public Body "2017-P-0732", which is the file number the Public Body assigned to the Applicant's access request.

[para 12] The response of the Public Body of July 31, 2017 to the Applicant indicates that the Public Body's representative at that time, reviewed all records and determined that all information in it was subject to section 17. The Public Body's response was a refusal to give access to the information the Applicant had requested. The Applicant's access is very clearly for information regarding a specific investigation file created in December of 2009 – January 2010.

[para 13] The Applicant requested review by the Commissioner of the Public Body's response.

[para 14] Once the Commissioner accepted the Applicant's request for review, the senior information and privacy manager (SIPM) assigned to investigate and attempt to settle the matter brought to the Public Body's attention that the records it had identified as responsive were not responsive. According to the Public Body's account, the SIPM asked the Public Body to search for responsive records. The Public Body did so, and applied section 17 to withhold them all, but also applied section 27(1)(a) to some information in the records as well. It is those records that were reviewed by the SIPM in her findings letter, to which the Public Body refers in its submissions.

[para 15] The Public Body's letter of March 6, 2019 to the SIPM states:

As you have requested as a part of your review, please find enclosed a copy of the records at issue. Information that was subject to legal privilege was withheld under section 27 as it involves reporter source information. [my emphasis] As you are aware, reporter source information is privileged as mandated by section 126.1 of the *Child, Youth and Family Enhancement Act (CYFEA)*. The function of s. 27 of *Freedom of Information and Protection of Privacy Act*, was

then operated in order to protect the identity of a reporter(s) as well as any information which would reveal the identity of the reporter source.

[para 16] The Public Body included a USB stick containing 2 files totalling 308 pages of records with the foregoing letter. The records contain the Public Body's severing decisions under section 27. The records are clearly responsive to the Applicant's access request, not only as she described them in her access request, but as she has consistently described them in all her communications with the Public Body and with this office.

[para 17] The SIPM reviewed the records provided to her on March 6, 2019 when she conducted her review.

[para 18] After the Commissioner agreed to conduct an inquiry and the Public Body was asked to provide the records at issue, the Public Body's current representative stated:

Further to your letter of September 16, 2019 requesting a copy of the records at issue for the Inquiry, this is to confirm that a redacted and unredacted copy of the records at issue were provided to [...], Senior Information and Privacy Manager, OIPC, on March 6, 2019 for the Review. The records are still a current version.

The records provided on March 6, 2019 were moved to inquiry as the Public Body requested. As discussed above, the records provided to this office on March 6, 2019 consist of 308 pages of records, reflecting the Public Body's decisions in relation to the application of section 27, in addition to section 17. The Public Body applied section 17(1) to the records in their entirety.

[para 19] I accept that the Public Body's representative for the inquiry may not have been aware of all the decisions and actions taken by the Public Body in relation to the Applicant's access request. However, I do not believe that this circumstance would justify removing records at issue from the scope of the inquiry, or permitting the Public Body to make decisions in relation to them, when it has already made those decisions and the decisions are at issue in the inquiry. The Public Body was provided with notice that section 27(1)(a) was at issue in the inquiry and I asked it additional questions regarding its application of this provision. I also clarified that the records at issue are from 2009 – 2011. The Public Body acknowledged in its submissions that the scope of the inquiry was broader than its representative had anticipated. I infer from this acknowledgement that it became aware on receiving the notice of inquiry and my questions that the scope of the inquiry included all records and all its severing decisions under sections 17 and 27 relating to them. The Public Body was given the opportunity to make submissions regarding these issues. The Public Body, by virtue of notification to its previous representatives, was also provided information regarding these issues as the file proceeded through mediation and to inquiry.

[para 20] I find that the scope of the inquiry cannot be narrowed as the Public Body suggests, as this would result in great unfairness to the Applicant and would detract from her right to review by the Commissioner of the Public Body's refusal to provide access to the records that were requested.

II. RECORDS AT ISSUE

[para 21] The contents of 1 USB stick labelled “2017-P-0732”, which the Public Body provided to this office on March 6, 2019 are at issue.

[para 22] One file contains 141 pages of records. I will refer to this file in the order as “File 1”. The other file contains 167 pages of records. I will refer to this file in the order as “File 2”.

III. ISSUES

ISSUE A: Does section 17(1) of the Act (disclosure an unreasonable invasion of personal privacy) apply to the information to which the Public Body applied this provision? In answering this question, the Adjudicator will consider the application of section 84 (exercise of rights by other persons).

ISSUE B: Did the Public Body properly apply section 27(1) of the Act (privileged information) to information in the records?

IV. DISCUSSION OF ISSUES

ISSUE A: Does section 17(1) of the Act (disclosure an unreasonable invasion of personal privacy) apply to the information to which the Public Body applied this provision? In answering this question, the Adjudicator will consider the application of section 84 (exercise of rights by other persons).

[para 23] Section 84 of the FOIP Act sets out situations in which the rights of an individual may be exercised by another. It states, in part:

84(1) Any right or power conferred on an individual by this Act may be exercised

(a) if the individual is deceased, by the individual’s personal representative if the exercise of the right or power relates to the administration of the individual’s estate [...]

[para 24] Section 2(c) of the FOIP Act establishes that a purpose of the FOIP Act is to create a right of access in an individual to obtain the individual’s own personal information. It states:

2 The purposes of this Act are

(c) to allow individuals, subject to limited and specific exceptions as set out in this Act, a right of access to personal information about themselves that is held by a public body [...]

[para 25] Section 84(1)(a) authorizes the personal representative of an estate to exercise a deceased's rights under the FOIP Act, such as that set out in section 2(c), if doing so relates to the administration of the deceased's estate.

[para 26] Section 17 of the FOIP Act directs public bodies not to disclose personal information if doing so would invade the personal privacy of an identifiable individual. It states, in part:

17(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) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if

[...]

(i) the personal information is about an individual who has been dead for 25 years or more [...]

[...]

(4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if

[...]

(b) the personal information is an identifiable part of a law enforcement record, except to the extent that the disclosure is necessary to dispose of the law enforcement matter or to continue an investigation [...]

[...]

(g) the personal information consists of the third party's name when

(i) it appears with other personal information about the third party, or

(ii) the disclosure of the name itself would reveal personal information about the third party [...]

[...]

(5) In determining under subsections (1) and (4) 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 Alberta or a public body to public scrutiny*
- (b) the disclosure is likely to promote public health and safety or the protection of the environment,*
- (c) the personal information is relevant to a fair determination of the applicant's rights,*
- (d) the disclosure will assist in researching or validating the claims, disputes or grievances of aboriginal people,*
- (e) the third party will be exposed unfairly to financial or other harm,*
- (f) the personal information has been supplied in confidence,*
- (g) the personal information is likely to be inaccurate or unreliable,*
- (h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant, and*
- (i) the personal information was originally provided by the applicant.*

[para 27] If the disclosure of personal information would be an unreasonable invasion of a third party's personal privacy, a public body must refuse to disclose the information to an applicant under section 17(1). Section 17(2) sets out the circumstances in which disclosing certain kinds of personal information is not an unreasonable invasion of personal privacy.

[para 28] When the specific types of personal information set out in section 17(4) are involved, disclosure is subject to a rebuttable presumption that it would be an unreasonable invasion of a third party's personal privacy to disclose the information. To determine whether disclosure of personal information would be an unreasonable invasion of the personal privacy of a third party, a public body must consider and weigh all relevant circumstances under section 17(5), (unless section 17(3), which is restricted in its application, applies), and balance these against any presumptions arising under section 17(4). Section 17(5) is not an exhaustive list and any other relevant circumstances must be considered. If, on the balance, it would not be an unreasonable invasion of personal privacy to disclose an individual's personal information, a public body may give an individual's personal information to a requestor.

[para 29] Section 17 is restricted in its application to the personal information of a third party. Section 1(r) defines the term "third party" for the purpose of the FOIP Act as

excluding an applicant. Read together, sections 17 and 1(r) establish that a public body may not apply section 17 to withhold an applicant's personal information from the applicant. It is only when the information at issue is about someone other than the applicant that section 17 may be applied.

[para 30] In the present case, there are two applicants requesting their personal information from the records: the deceased, through her personal representative, the mother of the deceased, and the mother of the deceased. In combination, these two individuals are the Applicant.

[para 31] The Public Body stated in its initial submissions:

The Public Body conducted another search and review of Children's Services records to determine whether there was any information of a testamentary nature in the records that would assist the Applicant in her role as a personal representative to settle the deceased's estate under section 84(1)(a) of the Act. The Public Body did not find any information that would be considered testamentary wishes of the deceased when she was alive, or information that could reasonably be interpreted to assist in the administration of the estate. To disclose the deceased's personal information in the records or other third parties would be an unreasonable invasion of their personal privacy.

[para 32] After I reviewed the Public Body's submissions, I drew to the parties' attention to cases in which access requests for the purposes of administering estates were adjudicated. In particular, I asked the parties to review Order MO-2137, a decision of the Ontario Office of the Information and Privacy Commissioner, which I followed in Order H2018-01. Order MO-2137 states:

In order to satisfy this part of the test, the requester must demonstrate that the request "relates to the administration of the estate". To meet this requirement, the requester must demonstrate that he/she is seeking access to the records for the purpose of administering the estate [Order MO-1315; *Adams v. Ontario (Information and Privacy Commissioner)*].

Requests have been found to "relate to the administration of the estate" where the records are:

- sought to assist in prosecuting a civil claim brought on behalf of the estate for damages that would be recoverable by the estate rather than the surviving family members [MO-1803, MO-2042]
- required in order to defend a claim against the estate [Order M-919]
- relevant to determining whether the estate should receive benefits under a life insurance policy [Order MO-1315]
- relevant to the deceased financial situation and allegations of fraud or theft of the deceased's property [Order MO-1301]

Requests have been found *not* to "relate to the administration of the estate" where the records are:

- sought to support a civil claim by family members under the *Family Law Act*, where any damages would be paid to the family members and not to the estate [Order MO-1256]

- sought for personal reasons, for example, where the requester “wishes to bring some closure to . . . tragic events” [Order MO-1563]

[para 33] In the foregoing order, the Adjudicator found that a request for access made for the purpose of gathering information to determine whether to pursue litigation on behalf of the estate was properly made by the administrator of the estate. She stated:

The appellants also state that they “may wish to prosecute a claim” against the deceased’s “healthcare providers” for damages resulting from injuries or harm incurred by her prior to her death. In regard to this possible action, the appellants emphasize that this would not be a claim for wrongful death but rather a “possible malpractice suit.” The appellants also submit that a review of the medical file would permit them to “determine whether or not the proper medical care was provided given the language barriers and possible lack of communication.” The appellants submit that the records at issue would provide sufficient information to determine whether or not a medical malpractice suit should be pursued.

[...]

Turning to the present appeal, I acknowledge that the City has offered compelling submissions in support of its view that the appellants’ request does not relate to the administration of the deceased’s estate. In particular, the City argues that the appellants’ interest is speculative since a statement of claim has not been issued and that the appellants are motivated by a desire to satisfy “themselves” not the “estate” in their pursuit of this information. In making its submissions, the City has distinguished the circumstances in this case from those in Order MO-1803, a case in which the estate had actually commenced a civil action.

In my view, while the initiation of a claim or action may be relevant in determining the second requirement, as it was in Orders MO-1525, MO-1803 and MO-2042, the absence of such a claim or action is not determinative. I find that in the present appeal the appellants, in their role as the personal representatives of the deceased’s estate, are contemplating legal action and that the information that is responsive to the request may be relevant to a determination of whether or not they proceed with an action on behalf of the estate.

Following and expanding on the reasoning of Adjudicator Liang in Order MO-1525, in my view, where there is some reasonable basis for considering a record or records relevant to a determination of whether the estate should undertake litigation, the requester is entitled to have access to them under section 54(a) in order to make his/her own determination on their possible significance to such a claim.

The appellants in this case have asserted allegations of wrongdoing against the deceased’s “healthcare providers” and they are contemplating a tort claim on behalf of the deceased’s estate in regard to these allegations. Clearly, they are now looking for evidence to support their allegations and, in their view, the information at issue may be relevant to a determination of whether or not the estate will ultimately proceed with such a claim. In my view, the application of the section does not depend on the relative importance of the records to the allegations being asserted on behalf of the estate, since the extent of their importance can only be determined upon a review of them by the appellants, in their capacities as estate executrices, possibly with the assistance of their legal counsel. Finally, the claim contemplated by the appellants is one that they are entitled to pursue, at law, as plaintiffs. I am satisfied that the records sought are potentially relevant to a determination of whether or not the estate will proceed with such a claim.

Therefore, based on all of the evidence before me, I find that the appellants' request for access is "related to the administration" of the deceased's estate and that the appellants have met the requirements of section 54(a). Accordingly, the appellants are entitled to have the same access to the information in the records as the deceased would have had.

The result of my finding is that the appellants' right of access to the records is to be determined as both a request for their own information and that of the deceased. I must now determine whether any exemptions under the *Act* restrict that access.

[para 34] As noted above, the Applicant informed the Public Body on June 8, 2017 that the records were being sought for two reasons. The first was to view the records to determine whether they contain evidence to support the position that the deceased's father should not inherit from her estate. The second reason was that the estate administrator required the information to determine whether to conduct litigation on behalf of the estate. Finally, as cited above, the Applicant provided the following clarification of the access request:

We are looking for just the statements made by [the deceased] in this document and respect the rights of privacy of the other three siblings in what they said in their false reporting, so it is fine to have their statements blanked out as our only concern would be with the words and statements of [the deceased].

The Public Body initially refused access to this request without reference to the Applicant's reasons for requesting the records, or the clarification that only the deceased's information was being sought. Instead, its stated reasons for refusing the request are that the records do not contain "testamentary wishes".

[para 35] The Public Body's initial refusal appears to be based on the idea that information may only be provided to an applicant under section 84(1)(a) if it relates to testamentary wishes. If so, then this is an interpretation that artificially narrows the application of section 84(1)(a), which only requires that the exercise of a right or power of the deceased by an administrator relate to the administration of an estate.

[para 36] The *Estate Administration Act* S.A. 2014, c. E-12.5 provides guidance as to what estate administration may entail in Alberta. This statute authorizes a Court to appoint a personal representative to administer an estate, as happened in this case. The role of a personal representative is to administer property. Section 1(h) the *Estate Administration Act* states:

I In this Act,

(h) "property" means

(i) real and personal property, as well as rights or interests in them,

(ii) anything regarded in law or equity as property or as an interest in property,

(iii) any right or interest that can be transferred for value from one person to another,

(iv) any right, including a contingent or future right, to be paid money or receive any other kind of property, and

(v) any cause of action, to the extent that it relates to property or could result in a judgment requiring a person to pay money;

[para 37] From the foregoing, I conclude that actions such as determining whether to pursue litigation (a cause of action) on behalf of an estate or to determine how property is to be distributed are actions relating to the administration of an estate in Alberta. I also find that the reasons the Applicant provided for making the access request relate to the distribution of property and determining whether to pursue litigation on behalf of the estate. I find that the Applicant's reasons for requesting the information relate to the administration of the deceased's estate according to the laws of Alberta and the Applicant is authorized to exercise any rights or powers that the deceased would have had under the FOIP Act, such as making a request for the deceased's personal information. Finally, I find that there is a reasonable connection between the requested personal information and the purposes for which the Applicant intends to use it.

[para 38] I also find that the Public Body's reasons for refusing to provide the requested information in its response of July 31, 2017 are not supported by section 84(1)(a). The Public Body informed the Applicant that the Applicant had to convince the Public Body that the records were *necessary* for administering the estate, in addition to establishing that the records relate to the administration of the estate; there is no such obligation in section 84(1)(a). A personal representative need only establish that requesting the deceased individual's personal information relates to the administration of the deceased's estate.

[para 39] The Public Body provided additional reasons in its submissions for refusing to provide any information from the requested file.

The Applicant has provided many reasons;

1) Deceased has the right for her estate to be settled.

The PB agrees.

2) Determining and notifying beneficiaries – determining the names and address of those beneficially entitled.

The PB disagrees as the records are over 11 years old and may not be accurate in the information recorded.

3) Records at Issue contain historical information necessary in determining the severing of a beneficiary, namely the biological father.

As previously stated all personal information of third parties is excepted from disclosure under section 17 therefore the information may not assist in the administration of the estate.

4) The requested information will show the deceased was or was not in contact with her biological father.

Names of third parties would be excepted from disclosure therefore contact the Deceased may have had with a third party would not be confirmed.

5) Need evidence of ongoing medical and mental health issues the Deceased had, which included her false reporting to Social Services in 2009, and therefore the Records at Issue are part of that evidence.

The PB submits the records may contain medical and mental health issues of the Deceased, however any determination of the Applicant's belief of any false reporting is an assumption being made by the Applicant. The determination of whether reporting and an investigation is substantiated is the role of Children's Services.

6) A civil tort claim to be made through her Estate, against a currently lawful beneficiary, for damages to compensate the Deceased for the harm suffered from this beneficiary, namely the biological father, including harm during the false reporting time period of 2009. Thus the need for the Records at Issue for determination.

Since the names of all possible beneficiaries would be excepted from disclosure, unless prescribed consent is provided, the records would likely not provide the information required for a claim by the Estate.

The PB still stands by the position that records for civil action on behalf of the Estate does not relate to the estate administration.

7) The Applicant states the wishes of the Deceased verbally known.

The records on file may provide circumstances that evolved around the Deceased, however as stated would not provide third party personal information.

[para 40] The Public Body is concerned that the file contains the personal information of third parties and correctly points out that section 84(1)(a) does not authorize an estate administrator to obtain such information if it would be an unreasonable invasion of personal privacy to disclose it. This concern does not address the Applicant's letter of June 8, 2017, in which it was clarified that the Applicant is not seeking the personal information of the deceased's siblings or other third parties. From my review of the records, I find that it would be possible to provide statements made by the deceased to the Applicant, in addition to personal information about the Applicant, without disclosing the personal information of third parties, if the Public Body took steps to sever the personally identifying personal information of third parties from the records. Section 6(2) requires the Public Body to sever information subject to exceptions if it can reasonably do so. The Public Body has not provided any explanation as to why it cannot do what the Applicant asked that it do in her letter of June 8, 2017.

[para 41] The Public Body takes the position that if it provided the statements of the deceased to the Applicant, the statements will not serve the purposes for which the Applicant requested the information. As discussed in Order MO-2137, it is for the estate to determine whether information is relevant to the administration of the estate, not the Public Body. An applicant does not have to present its legal theories or confidential legal advice to a public body in order to obtain access or establish that a legal claim will succeed; an applicant need only establish that the access request relates to the administration of an estate. From my review of the records, I find that information in the records is potentially relevant for the purposes for which the Applicant has requested it and for which she received authority to represent the estate from the Court of Queen's Bench. I find that the access request relates to the administration of the estate within the terms of section 84(1)(a).

[para 42] The Public Body takes the position that the Applicant is seeking the records to prove that the reporting in them is false and states that substantiating whether reporting is false is the role of the Public Body. This is a misinterpretation of the Applicant's access request and her submissions. The Applicant refers to the reporting in the file as "false" because that is her understanding, based on personal knowledge, of the events documented in the file, as to what the Public Body's investigators determined. The Applicant's use of the term "false" appears intended to assist the Public Body to identify the kinds of information the estate is seeking, not to challenge the decisions of the investigators.

[para 43] Finally, the Public Body notes that the Applicant has not been able to provide the consents of third parties whose personal information is contained in the file. The Public Body states that it must sever information belonging to third parties from the file, with the result that no meaningful information could be provided to the Applicant.

[para 44] The Public Body has not turned its mind to the information in the records or its duty under section 6 of the FOIP Act to sever information that is the subject of an exception. As will be discussed in greater detail below, there is information in the records that could be provided to the Applicant that may serve the purposes for which the Applicant requested the information even if the personally identifying information of third parties is severed from the records. Moreover, as discussed above, it is not mandatory to withhold information from an applicant merely because the information is personal information; rather, it is necessary to consider the factors under section 17(5) first to determine whether it would be an unreasonable invasion of personal privacy to disclose the information. It is only when it would be an unreasonable invasion of a third party's personal privacy to disclose personal information that personal information may be withheld under section 17.

[para 45] To conclude, I find that section 17(1) of the FOIP Act cannot be applied to the personal information of the deceased or her mother where this information appears in the records, given that the deceased and her mother are, in effect, the Applicant. As discussed above, section 17(1) can only be applied to the personal information of third parties; an applicant is not a third party by application of section 1(r) of the FOIP Act.

The Scope of the Access Request

[para 46] The Applicant's original access request was for all records concerning the deceased contained in the Public Body's file #2010-P-0196, although the Applicant also asked for a copy of the file. The Applicant indicated that the information was being sought to assist in the settlement of a dispute among beneficiaries. The Applicant also explained that the dispute was before the Court of Queen's Bench.

[para 47] On June 8, 2017, the Applicant clarified that the Applicant was seeking the words used, and statements made, by the deceased. The Applicant indicated that the information of third parties, such as the deceased's siblings, was not being sought. The Applicant also stated: "Any information regarding [the deceased's] physical, mental, emotional state over the years as well as her social relationship dynamics and family situation would be helpful." The second description of what is being sought is far broader than the first; that is, information regarding the deceased's mental state and relationship dynamics is a broader category than "statements made by the deceased".

[para 48] In her final submissions, the Applicant stated that the access request was for all the information in the file, subject to any necessary redactions:

The Administrator has requested "*ALL RECORDS CONCERNING*" [the Deceased] from File #2010-P-0196, and also the personal information of [the deceased's mother] from File #2017-P-0732 (as requested by the *OIPC* Review in 2018), therefore was understood to be requests from both these *FOIP* Files. The Administrator now agrees to receive all records in both Files and not just the personal information for certain individuals but to receive all records in these *FOIP* Files, subject to proven redactions, as all records are needed for the Estate administration including all the personal information of the Administrator found within both.

[para 49] As the Public Body was of the view that it was required to refuse access to the file in its entirety, the Public Body did not take steps to clarify the access request, such as determining the scope of the access request, or explaining to the Applicant what kinds of recorded information it had in its custody or control to enable the Applicant to narrow the request to ensure that the Applicant would receive the information the Applicant was seeking, where exceptions to the right of access did not apply.

[para 50] I find that the Applicant did not intend to narrow the scope of the access request from one for the file to statements made by the deceased and no other information. The clarification of June 8, 2017 could be interpreted as indicating that the requestor was primarily interested in receiving statements made by the deceased, and was not interested in receiving personally identifying information about the deceased's siblings, such as statements. The reference to seeking information about the deceased's mental state and relationship dynamics over the years supports this interpretation. I have decided to interpret the access request as one for the file, excluding the personally identifying information of third parties that it may contain.

[para 51] In response to my questions as to the purpose in making the access request, the Applicant stated:

I was asked by the Court Lawyer, in a consultation requested by the Surrogate Court Queen's Bench Justice, to prepare a final affidavit, with certain historical documentation to be included in my affidavit, verifying specific and particular historical circumstances and aspects of the Deceased [...] in order for the Justice to be able to make his final decision regarding the severing of the beneficiary rights of the Deceased's biological father. Also, by reviewing the historical documentation, the Estate itself seeks to determine if a civil tort case, on behalf of the Deceased, is to be brought against the biological father to compensate the Deceased for damages [inflicted] by him.

[para 52] This response also supports finding that the original scope of the access request as one for the file continues to reflect the Applicant's purpose in requesting the information. I say this because of the reference to "specific and particular historical circumstances". The Applicant's final submissions provide further clarity and are consistent with her other submissions.

[para 53] I turn now to the question of whether the Applicant should be given access to this information or whether section 17 of the FOIP Act prohibits giving the Applicant access.

[para 54] As noted above, section 17(1) cannot be applied to withhold the personal information of the deceased or her mother from the Applicant. However, if the Applicant's personal information is intertwined with the information of third parties, such as the deceased's siblings, section 17(1) may be applied to the information that would identify the third party.

[para 55] The Applicant argues:

Therefore what [the deceased] (while she was still living) said about a third party is that third party's own personal information but because [the deceased] (while she was still living) said those words about them, her words about them are also her own personal information according to Order F2014-02.

Thus Section 17(1) doesn't fully apply to Section 1(n)(ix) "opinions about other people" being only that third party's personal information because the opinion also belongs to the opinion-giver. Therefore, as I perceive this, the Administrator is entitled to the information of the opinion-giver (both the Deceased and the Administrator gave opinions about others in the Records at Issue). Therefore disclosure allows the Administrator to have the Deceased's opinions about third parties because she (while she was living) was the opinion-giver. And the Administrator can have the Administrator's opinions about others because the Administrator was the opinion-giver, subject only to the provision in Section 17(5) that proves "unreasonable invasion" of a third party's privacy in the words of the opinion-giver.

Thus [deceased's] testimony (while she was living) to any social worker or police officer any time in her life still belongs to her because she is the opinion-giver. Therefore third party information can be disclosed.

[para 56] The Applicant is correct that past orders of this office have held that an individual's opinions about other individuals are the personal information of both the holder of the opinion and of the subject of the opinion.

[para 57] The deceased's opinions about other individuals are contained in the records. The fact that the deceased had the opinion is the deceased's personal information; the substance of the opinion is the personal information of the individual the opinion is about. When the deceased's opinions are about her mother, or the mother stated opinions about the deceased, the Applicant is correct that the opinion cannot be withheld under section 17, for the reasons I have stated above. In addition, where the deceased's opinions are not about an identifiable individual, that information cannot be withheld under section 17. However, where the opinions are about the deceased's siblings or other identifiable individuals, section 17 applies and requires consideration of whether it would be an unreasonable invasion of personal privacy to disclose the information.

The deceased's siblings

[para 58] The information about the deceased's siblings is about them as children or as young adults. The information consists of their names, in addition to other personal information about them within the terms of section 17(4)(g). The "other personal information" includes such information as their private thoughts and feelings during a difficult time in their lives in addition to information about their employment and education history. In my view, the siblings' youth and the emotionally charged nature of their feelings in the records weigh strongly against disclosing their personally identifying information. I also find that this outweighs any interests raised by the Applicant regarding the administration of the estate, which does not turn on issues regarding the siblings' statements or thoughts at that time.

[para 59] Although I find that section 17(1) requires the Public Body to withhold the siblings' personally identifying information from the Applicant, I find that the Public Body will be able to sever the personally identifying information of the siblings, such as their names, and details about their educational and work histories, with the result that the Public Body will be able to provide the remaining information to the Applicant.

[para 60] I will confirm the Public Body's decision to sever the pronouns of the deceased's siblings from the records where the pronouns would serve to identify which sibling is being discussed. I will also confirm the Public Body's decisions to sever personal information that is solely about the deceased's siblings' statements and information that would identify them, such as information about their job titles, employers, or vacation histories.

[para 61] There are also statements in the records that refer to "siblings", "children" and "family" generally. In my view, these statements are not personal information in this case as the statements do not convey sufficient information about anyone in particular to be information about them as identifiable individuals, particularly once the names of the siblings and other identifiers have been removed from other places in the records.

The deceased's father

[para 62] Information about the deceased's father is contained in the records. This information is included in the records as part of the deceased's personal history. The information includes the father's name, the offense he committed, the conviction he received and his province of residence.

[para 63] I find that the information about the father is the father's personal information and is subject to the presumption created by section 17(4)(g), that it would be an unreasonable invasion of the father's personal privacy to disclose his information.

[para 64] I find that the fact the father's personal information is also the deceased's personal biographical information in this case is a factor weighing in favor of disclosure. I also find that the public nature of the conviction and sentence weighs in favor of disclosure. In my view, the factors in favor of disclosure outweigh the interests in withholding the information. I will therefore direct the Public Body to disclose this information.

The deceased's mother's sister (the deceased's aunt)

[para 65] The Applicant submitted the consent of the deceased's mother's sister to disclose her personal information from the records. I find that section 17(2)(a) applies and that the personally identifying information of the deceased's mother's sister may be disclosed where it appears in the records.

Other third parties

[para 66] As there do not appear to be any factors weighing in favor of disclosure of the information of other third parties acting as individuals in the records, I will confirm the decision of the Public Body to sever the names of third parties in their personal capacities, other than the deceased's father and the deceased's mother's sister, from the records. By "personal capacity" I mean acting as an individual, rather than as a representative, as in the case of the Public Body's investigators or psychologists.

ISSUE B: Did the Public Body properly apply section 27(1) of the Act (privileged information) to information in the records?

[para 67] Section 126(1) of the *Child, Youth and Family Enhancement Act* (CYFEA) states, in part:

126(1) The Minister and any person employed or assisting in the administration of this Act, including an agency providing services on behalf of a director, may disclose or communicate personal information that comes to the Minister's or person's or agency's attention under this Act only in accordance with the Freedom of Information and Protection of Privacy Act, in proceedings under this Act, in accordance with Part 2, Division 2 or this Part or as follows [...]

[para 68] Section 126.1 of the CYFEA contains an exception to section 126(1) with regard to the identities of reporters under the CYFEA. This provision states, in part:

126.1(1) Despite section 126(1), the name of a person who makes a report to the director or a police officer under section 4 or 5 and information that would identify that person is privileged information of the person making the report and is not admissible in evidence in any action or proceeding before any court or an Appeal Panel or before any inquiry without the consent of the person.

(2) Despite subsection (1), the Minister may direct the release of information under subsection (1) that would identify the person.

(3) If there is a conflict or inconsistency between subsection (1) and the Freedom of Information and Protection of Privacy Act, subsection (1) prevails.

[para 69] The Public Body applied section 27 of the FOIP Act to information it considered would reveal the identities of persons who made reports to the director under section 126.1(1). I agree with the Public Body that information subject to section 126.1(1) is privileged information to which section 27 may be applied.

[para 70] Section 126.1(1) states that information regarding the identity of a reporter is not privileged if the reporter consents to the admission of the evidence in a proceeding before a court, an Appeal Panel or before an inquiry.

[para 71] Section 126(1), above, establishes that disclosures of personal information under the CYFEA must be made in accordance with the FOIP Act. Section 126.1 of the CYFEA may then be viewed as establishing that information about reporters may only be disclosed under the FOIP Act if the reporter consents to the disclosure.

[para 72] The Public Body has applied section 27(1) to the identities of two reporters.

[para 73] The first reporter is the reporter whose identity is revealed in record 5 of File 1. I find that the first reporter has consented to the disclosure and that information regarding the reporter's identity is not privileged, given that this reporter has consented to disclosure.

[para 74] The second reporter's personal information appears on records 1, 132, and 134 of File 2. I find that there is no consent to disclose the personally identifying information of this reporter, and I support the Public Body's decision to withhold the personally identifying information of this reporter from the Applicant. However, I find that the Public Body was wrong to sever information as to whether the reporter was a firsthand witness or not as this information does not serve to identify the reporter.

[para 75] To conclude, I find that the Public Body was correct to apply section 27(1) to records 132 and 134, which contain the information of the second reporter, but for the

information as to whether the second reporter witnessed events. I direct the Public Body's attention to record 1 of File 2, where the identity of the second reporter (or reporters) is also contained. Given my finding that the first reporter consented to disclosure, I will direct the Public Body to disclose the records revealing the identity of the first reporter to the Applicant.

IV. ORDER

[para 76] I make this order under section 72 of the Act.

[para 77] As discussed in the order, I confirm the decision of the Public Body to sever the personally identifying information of the deceased's siblings from the records, such as their names and information regarding their personal histories that would make them identifiable.

[para 78] I confirm the decision of the Public Body to sever the personally identifying information of third parties acting in their capacities as individuals from the records, other than the deceased's father and mother's sister.

[para 79] I confirm the decision of the Public Body to sever the information of the second reporter from File 2, under section 27(1).

[para 80] I order the Public Body to give the Applicant access to the remaining information in the records.

[para 81] I order the Public Body to inform me within 50 days of receiving this order that it has complied with it.

Teresa Cunningham
Adjudicator
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