

ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER 2001-014

August 24, 2001

ALBERTA GOVERNMENT SERVICES

Review Number 2132

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Summary: The Applicant applied under the *Freedom of Information and Protection of Privacy Act* (the “FOIP Act”) for copies of two change of name applications regarding the Applicant’s child. The Assistant Information and Privacy Commissioner agreed with Alberta Government Services that a copy of a change of name application was a record made from information in an office of a district registrar as defined in the *Vital Statistics Act*, and was excluded from the application of the FOIP Act by section 4(1)(h)(iv). Therefore, the Assistant Commissioner did not have any jurisdiction over what the Applicant requested. The Applicant could not get a copy of a change of name application under the FOIP Act.

Statutes Cited: AB: *Change of Name Act*, R.S.A. 1980, c. C-4, ss. 1(d), 17(1), 17(2), 17(3), 18(1), 18(6), 19, 20(1), 20(2); *Freedom of Information and Protection of Privacy Act*, S.A. 1994, c. F-18.5, ss. 1(1)(q), 4(1)(h)(iv), 4(1)(k); *Land Titles Act*, R.S.A. 1980, c. L-5; *Vital Statistics Act*, R.S.A. 1980, c. V-4, ss. 1(e), 1(g), 1(h), 1(t), 3, 4, 5, 6, 8, 9, 10, 12, 13, 16, 17, 21(1), 21(1)(b), 24(1), 24(3), 25(1), 25(3), 26(1), 26(2), 26(5), 29, 29(1), 29(4), 29(5), 29(7), 29(8), 29(9), 31, 32, 32(10), 39(1), 39(2), 49(d).

Authorities Cited: AB: Orders 97-017, 2000-022.

I. BACKGROUND

[para 1.] On November 22, 2000, the Applicant applied to the Director of Vital Statistics for access to information under the *Freedom of Information and Protection of Privacy Act* (the “FOIP Act”). The Applicant wanted copies of two change of name applications regarding the Applicant’s child.

[para 2.] Alberta Government Services, the Public Body that has provincial responsibility for Alberta Registries, including Vital Statistics Services, denied access on the basis that the Applicant’s request asked for records that would fall within those records that are excluded from the application of the FOIP Act by section 4(1)(h)(iv) (record made from information in an office of a district registrar as defined in the *Vital Statistics Act*).

[para 3.] The Applicant requested a review under the FOIP Act. Mediation was authorized but was not successful. The matter was set down for a written inquiry. I received written submissions from the Public Body, the Applicant and an Affected Party.

II. RECORDS AT ISSUE

[para 4.] For the inquiry, the Public Body provided only the first change of name application listed in the Applicant’s access request. The Public Body informed my legal counsel that it did not have the second change of name application. The Public Body speculated that that application may have originated in another province.

[para 5.] The change of name application provided for the inquiry contains a number of documents, all of which I will refer to as “the change of name application”.

[para 6.] In addition to the change of name application, the Public Body provided three other related records. For instructive purposes, I intend to comment on those records, although they are not responsive to the Applicant’s access request.

III. ISSUES

[para 7.] There are two issues in this inquiry:

A. Are the Records requested by the Applicant excluded from the application of the FOIP Act by section 4(1)(h)(iv)?

B. If the FOIP Act applies to the Records, does section 16 apply to the Records?

IV. DISCUSSION OF THE ISSUES

ISSUE A: Are the Records requested by the Applicant excluded from the application of the FOIP Act by section 4(1)(h)(iv)?

1. General

[para 8.] The Applicant asked for copies of the change of name applications. The Public Body argued that what the Applicant requested is excluded from the application of the FOIP Act by section 4(1)(h)(iv), which reads:

4(1) This Act applies to all records in the custody or under the control of a public body, including court administration records, but does not apply to the following:

(h) a record made from information

(iv) in an office of a district registrar as defined in the Vital Statistics Act...

[para 9.] To be excluded from the application of the FOIP Act by section 4(1)(h)(iv), a record must meet all the requirements of section 4(1)(h)(iv). I intend to consider the meaning of the following:

- “information in an office of a district registrar as defined in the *Vital Statistics Act*”
- “a record made from” information in an office of a district registrar

[para 10.] I must decide whether what the Applicant requested is “a record made from information in an office of a district registrar as defined in the *Vital Statistics Act*”.

2. Meaning of “information in an office of a district registrar as defined in the *Vital Statistics Act*”

[para 11.] A change of name application is made under the *Change of Name Act*, R.S.A. 1980, c. C-4.

[para 12.] The relevant portions of the *Change of Name Act* read:

I In this Act,

...

(d) “Director” means the Director of Vital Statistics.

...

17(1) Every application for a change of name under this Act shall be filed with the Director and shall be in the prescribed form.

(2) Every applicant shall file with his application

(a) repealed 1996 c32 s2,

(b) an affidavit of bona fides in the prescribed form or to the like effect,

(c) the consent in the prescribed form or to the like effect of every person whose consent is necessary under this Act and a copy of any order made under section 14,

(d) the certificate of birth of the applicant and the certificate of birth of every person whose name may be changed as a result of the application or, if that is not available, any other documentary proof of name or identity that is acceptable to the Director, and

(e) any further documentary evidence or information required by the Director.

...

(3) An application under section 7 shall be accompanied by any proof that is required of the dissolution of the marriage and that the applicant has lawful custody of the child named in the application.

18(1) The Director shall,

(a) on all requirements of this Act being complied with, and

(b) on payment of the prescribed fee,

register the change of name by the issuance of a certificate in the prescribed form.

...

(6) When a change of name has been effected under this Act, the certificate of change of name shall be kept in the office of the Director and shall be preserved and remain in his custody as part of the records of his office.

19 The Director shall forthwith on registering a change of name amend his records under the Vital Statistics Act in conformity with any certificate issued under this Act and shall make no charge for the amendments.

20(1) On registration of a change of name a duplicate of the certificate issued shall be delivered to the applicant.

[para 13.] The change of name application contains documents falling within section 17(1) and section 17(2) of the *Change of Name Act*.

[para 14.] As set out in section 17(1) of the *Change of Name Act*, it is evident that a change of name application is made to the Director of Vital Statistics. The Director not only registers the change of name (section 18(1) of the *Change of Name Act*), but also maintains the certificate of change of name in the office of the Director [emphasis added] as part of the records of his office (section 18(6) of the *Change of Name Act*). Given this, in what way is a change of name application “information in an office of a district registrar [emphasis added] as defined in the *Vital Statistics Act*”?

[para 15.] The *Vital Statistics Act*, R.S.A. 1980, c. V-4, uses the term “district registrar”, which is defined in section 1(h) to mean a district registrar appointed under the *Vital Statistics Act*. The references to “district registrar” in the *Vital Statistics Act* are references to an individual.

[para 16.] Section 4(1)(h)(iv) of the FOIP Act uses the term “an office of a district registrar”, but does not define that term. Because section 4(1)(h)(iv) does not use the term “district registrar”, I conclude that “an office of a district registrar” must mean something more than an individual “district registrar”.

[para 17.] I note that the *Vital Statistics Act* does not use or define the term “an office of a district registrar”. Only one reference in section 29(4) of the *Vital Statistics Act* hints at “an office of a district registrar”. That provision refers to “his office” in the context of a district registrar’s duties. Section 39(1) and section 39(2) of the *Vital Statistics Act* also contain brief references to records, books and documents pertaining to “any office” or “the office”.

[para 18.] What does “an office of a district registrar” mean?

[para 19.] In Order 97-017, the Commissioner considered the meaning of “office of a Member of the Legislative Assembly” in section 4(1)(k) of the FOIP Act. The Commissioner accepted the argument that “office” should be given a meaning broader than the physical space occupied by the Member.

[para 20.] Following Order 97-017, I find that “an office of a district registrar” is not a physical office for the purposes of section 4(1)(h)(iv) of the FOIP Act. Furthermore, the *Vital Statistics Act* does not refer to a physical office of a district registrar, and there appears to be no physical office of a district registrar in fact. There is only “Vital Statistics Services”, which is part of Alberta Registries: see section 25(1) of the *Vital Statistics Act*. Even the change of name application provided to me for the inquiry has only the heading “Alberta Registries, Vital Statistics Services”.

[para 21.] In Order 97-017, the Commissioner agreed with the public body that “office” in section 4(1)(k) of the FOIP Act refers to the person’s official capacity and the functions and duties associated with the position, and includes other persons performing duties associated with the office.

[para 22.] As provided by section 26(1) and section 26(2) of the *Vital Statistics Act*, the “Director” appoints a district registrar, whose function is to record all vital statistics events occurring in the area for which he is appointed. “Director” is defined in section 1(g) of the *Vital Statistics Act* to mean the Director of Vital Statistics.

[para 23.] The main statutory function of a district registrar is to register births, stillbirths, marriages and deaths: see sections 3, 8, 12 and 16 of the *Vital Statistics Act*, respectively. To that end, a district registrar obtains statements in the prescribed form from certain persons, who are required to complete those statements and send them to the district registrar. In my view, those statements, which relate to the statutory functions and duties of the district registrar, are “information in an office of a district registrar” for the purposes of section 4(1)(h)(iv) of the FOIP Act.

[para 24.] Section 29 of the *Vital Statistics Act* also concerns the statutory functions and duties of a district registrar. The relevant provisions read:

29(1) Each district registrar shall examine each statement respecting a birth, stillbirth, marriage or death when presented for registration to see that it has been made out in accordance with this Act and the regulations and instructions of the Director.

...

(4) He shall then number consecutively the statements of births, stillbirths, marriages and deaths, beginning with number one for the first birth and the first stillbirth and the first marriage and the first death in each calendar year, and sign his name as district registrar, giving the date of filing in his office.

(5) A district registrar shall keep in a place of safety, while they are in his possession, the original statements of every birth, stillbirth, marriage or death, and all other returns, records, forms and documents received by him.

...

(7) A district registrar shall, on Friday of each week, send by mail to the Director the original statements of every birth, stillbirth, marriage or death registered during the period of 7 days ending with, and including, the next preceding day; and, if no birth, stillbirth, marriage or death has been registered during the period, he shall, on the Friday as aforesaid, report that fact to the Director on the prescribed form.

(8) A district registrar shall, in the prescribed register, record each birth, stillbirth, marriage or death registered with him.

(9) The Director shall supply the district registrars with the blank forms and registers necessary for the discharge of the duties herein imposed on them, and the district registrars shall apply to the Director for the issue of blank forms and registers whenever they require them.

[para 25.] As set out above, a district registrar must record births, stillbirths, marriages and deaths in the prescribed register (section 29(8) of the *Vital Statistics Act*). On a weekly basis, a district registrar must send to the Director the original statements of births, stillbirths, marriages and deaths registered during the week (section 29(7) of the *Vital Statistics Act*).

[para 26.] Section 49(d) deals with regulations fixing the times when “registrars” are to forward registrations to the Director. Since there are no “registrars” under the *Vital Statistics Act*, I presume this section means “district registrars”. I was unable to locate any regulations under section 49(d), but the fact remains that a district registrar must also forward registrations to the Director.

[para 27.] Section 24(1) of the *Vital Statistics Act* deals with the powers of a district registrar to correct a registration. Section 24(1) reads:

24(1) If, while the registration of a birth, stillbirth, marriage or death is in the possession of a district registrar [emphasis added], it is reported to him that an error exists in the registration, he shall inquire into the matter and if he is satisfied that an error has been made he may correct the error according to the facts by making a notation of the correction on the registration without altering the original entry.

[para 28.] None of the foregoing functions and duties of a district registrar under the *Vital Statistics Act* concern a change of name application, which I have said is made to the Director of Vital Statistics.

[para 29.] If I were to interpret “an office of a district registrar” as including only the functions and duties of a district registrar under the *Vital Statistics Act*, I would be excluding the functions and duties of the Director, as follows.

[para 30.] First, in certain circumstances, the Director registers births, marriages and deaths (sections 4, 5, 6 (births), 13 (marriages), 17 (deaths) of the *Vital Statistics Act*). The Director also registers adoptions (section 9 of the *Vital Statistics Act*) and changes of name (section 18(1) of the *Change of Name Act*). The Director maintains special registers (sections 5 and 10 of the *Vital Statistics Act*).

[para 31.] Furthermore, the Director may also correct a registration. Section 24(3) of the *Vital Statistics Act* reads:

24(3) If, after a registration has been received or made by the Director [emphasis added], it is reported to him that an error exists in the registration, the Director shall inquire into the matter and, on the production of evidence satisfactory to him verified by statutory declaration, he may correct the error by making a notation of the correction on the registration without altering the original entry.

[para 32.] Second, the information obtained by a district registrar under the *Vital Statistics Act* does not stay with the district registrar for very long. Section 29(7) of the *Vital Statistics Act* makes it clear that original statements of every birth, stillbirth, marriage or death must be sent to the Director on a weekly basis. Section 24(1), section 24(3) and section 49(d) of the *Vital Statistics Act* imply that even the registrations made by a district registrar are sent to the Director. There is a constant information flow to the Director, who has responsibility for the administration of the *Vital Statistics Act* and for the direction and supervision of Vital Statistics Services: see section 25(3) of the *Vital Statistics Act*.

[para 33.] Finally, section 26(5) is also relevant, and reads:

26(5) The Director may carry out any of the duties of the district registrar of any registration district.

[para 34.] “Registration district” is defined in section 1(t) of the *Vital Statistics Act* to mean an area for which a district registrar has been appointed under section 26.

[para 35.] To exclude the functions and duties of the Director in interpreting “an office of a district registrar” would create an absurdity, because only the information obtained by a district registrar would fall within section 4(1)(h)(iv), and none of the information obtained by the Director. I do not think that the Legislature intended section 4(1)(h)(iv) to be interpreted that way.

[para 36.] In Order 2000-022, the Commissioner considered the statutory functions of a Land Titles Office under the *Land Titles Act* as a whole, to decide what “information in a Land Titles Office” meant. Therefore, I intend to consider the statutory functions and duties under the *Vital Statistics Act* as a whole.

[para 37.] The *Vital Statistics Act* sets out the statutory functions and duties of a district registrar and the Director, as discussed above. The *Vital Statistics Act* also refers to the statutory functions and duties of the Director under the *Change of Name Act*. Consequently, I conclude that “office of a district registrar” in section 4(1)(h)(iv) means

the statutory functions and duties of a district registrar under the *Vital Statistics Act* and the Director under the *Vital Statistics Act* and the *Change of Name Act*.

[para 38.] I have said that the *Vital Statistics Act* does not use the term “an office of a district registrar”, but it does use the term “the office of the Director” or similar wording, such as “the Director’s office” or “his office”. Although “the office of the Director” is not defined, I would interpret that term to also mean the statutory functions and duties of the Director.

[para 39.] Collectively, the functions and duties of a district registrar and the Director comprise Vital Statistics Services. In other words, I would read “an office of a district registrar” in section 4(1)(h)(iv) to mean Vital Statistics Services as a whole. My rationale for such an interpretation is this: The public does not see the functions and duties of a district registrar and the Director, or a separation of those functions. Indeed, the public sees a seamless Vital Statistics Services, as evidence by the heading “Alberta Registries, Vital Statistics Services” on the change of name application.

[para 40.] The information that relates to the statutory functions and duties of a district registrar and the Director, that is, the information of Vital Statistics Services, includes any information provided for registration under either the *Vital Statistics Act* or the *Change of Name Act*. Therefore, I find that the change of name application, which is provided for registration under the *Change of Name Act*, is “information in an office of a district registrar” for the purposes of section 4(1)(h)(iv) of the FOIP Act.

3. Meaning of “a record made from” information in an office of a district registrar

[para 41.] “Record” is defined in section 1(1)(q) of the FOIP Act, as follows:

1(1) In this Act,

(q) “record” means a record of information in any form and includes books, documents, maps, drawings, photographs, letters, vouchers and papers and any other information that is written, photographed, recorded or stored in any manner, but does not include software or any mechanism that produces records.

[para 42.] The Applicant asked for a copy of the change of name applications. I assume that the Applicant wants a photocopy, which would be a “record”. That record (photocopy) would be “a record made from” the change of name application, which I have said is information in an office of a district registrar.

[para 43.] Consequently, since a copy of a change of name application is a record made from information in an office of a district registrar, that record is excluded from the

application of the FOIP Act by section 4(1)(h)(iv). The Applicant cannot get a copy of this or any change of name application under the FOIP Act.

[para 44.] I have said that I would also deal with other records the Public Body provided for the inquiry, although those records are not responsive to the Applicant's access request.

[para 45.] The Public Body provided a record to which section 21(1)(b) of the *Vital Statistics Act* applies. Section 21(1) reads:

21(1) When the name of a person is changed under the Change of Name Act or in accordance with the laws of the jurisdiction in which the person was resident at the time of the change of name, the Director, on production to him of proof of the change and evidence satisfactory to him as to the identity of the person,

(a) if the birth or marriage of the person is registered in Alberta, shall cause a notation of the change to be made on its registration, and

(b) if the change was made under the Change of Name Act and the person was born or married outside Alberta, shall transmit to the officer in charge of registration of births and marriages in the jurisdiction in which the person was born or married a copy of the proof of the change of name produced to the Director.

[para 46.] I find that the record to which section 21(1)(b) of the *Vital Statistics Act* applies is "a record made from" information in an office of a district registrar.

[para 47.] I find that the duplicate certificate of change of name provided for the inquiry was made under section 20(2) of the *Change of Name Act* and is therefore "a record made from" information in an office of a district registrar.

[para 48.] I find that one further record related to the change of name that was provided for the inquiry is also "a record made from" information in an office of a district registrar.

[para 49.] In my view, each of the following (most of which I have discussed in this Order) would also be "a record made from" information in an office of a district registrar (Vital Statistics Services) for the purposes of section 4(1)(h)(iv) of the FOIP Act:

- a special register (section 5 and section 10 of the *Vital Statistics Act*)
- a correction notation (section 24(1) and section 24(3) of the *Vital Statistics Act*)

- a registration and a register itself (section 29(8) of the *Vital Statistics Act*)
- a report on a search (section 31 of the *Vital Statistics Act*)
- a certificate, certified copy or photographic print (section 1(e) and section 32 of the *Vital Statistics Act*)

[para 50.] My interpretation of “a record made from” information in an office of a district registrar is not affected by the fact that issuance of certificates and copies of certain records has been privatized, so a person now goes to a private registry to get certificates and copies of certain records under the *Vital Statistics Act* and the *Change of Name Act*.

4. Conclusion under section 4(1)(h)(iv)

[para 51.] I find that the Records requested by the Applicant are excluded from the application of the FOIP Act by section 4(1)(h)(iv). Consequently, I have no jurisdiction over those Records. The Applicant cannot get access to those Records under the FOIP Act.

[para 52.] I make no comment on whether there are procedures other than the FOIP Act by which the Applicant may get access to the Records. It appears that the Applicant cannot obtain a copy of the Records under the *Vital Statistics Act*, as section 32(10) provides:

32(10) No certificate, certified copy or photographic print shall be issued under this Act in respect of the registration of an adoption or change of name.

[para 53.] However, under section 20(2) of the *Change of Name Act*, a duplicate or a certified copy of a certificate of change of name is available to anyone who applies and pays the fee.

[para 54.] The Applicant has argued the merits or lack thereof of the FOIP Act itself in relation to access to the Records. Those arguments are not relevant to a determination of whether the FOIP Act does or does not apply to the Records.

ISSUE B: If the FOIP Act applies to the Records, does section 16 apply to the Records?

[para 55.] As the FOIP Act does not apply to the Records, I do not have jurisdiction to consider whether section 16 applies to those Records.

V. ORDER

[para 56.] The Records requested by the Applicant are excluded from the application of the FOIP Act by section 4(1)(h)(iv). Consequently, I have no jurisdiction over those Records. The Applicant cannot get access to those Records under the FOIP Act.

[para 57.] As the FOIP Act does not apply to the Records, I do not have jurisdiction to consider whether section 16 applies to those Records.

Frank Work, Q.C.
Assistant Information and Privacy Commissioner