

**OFFICE OF THE INFORMATION
COMMISSIONER (W.A.)**

**File Ref: F2022299
Decision Ref: D0022025**

Participants:

‘P’
Complainant

- and -

Department of Justice
Agency

DECISION AND REASONS FOR DECISION

FREEDOM OF INFORMATION – application for amendment of personal information about a deceased person under Part 3 of the *Freedom of Information Act 1992* – death certificate – refusal to amend personal information of a deceased person – closest relative of a deceased person

Freedom of Information Act 1992 (WA): sections 45(1), 45(2) and 45(5); Schedule 2: Glossary

Adoption Act 1994 (WA): sections 75 and 80

Births Deaths and Marriages Registration Act 1998 (WA): section 51

Family Law Act 1975 (Cth): section 61E

Guardianship and Administration Act 1990 (WA): section 3

Interpretation Act 1984 (WA): section 5

Privacy and Responsible Information Sharing Act 2024: section 235

Liang v Minister for Immigration [2007] FMCA 1288

Re Gordon (a pseudonym) (No 2) [2020] NSWSC 673

Re J and Police Force of Western Australia [2008] WAICmr 5

Roche -v- Douglas as Administrator of the Estate of Edward John Hamilton Rowan (dec) [2000] WASC 146

Syme -v- Arthur Metaxas as Executor of the Estate of Norman Frank Monck [2005] WASC 152

0906230 [2009] MRTA 2652

Hansard, Legislative Assembly, 28 November 2024, 6861-6863

DECISION

The decision of the agency not to amend the disputed document in accordance with the complainant's application for amendment made under Part 3 of the *Freedom of Information Act 1992* (WA) is confirmed.

Catherine Fletcher
INFORMATION COMMISSIONER

7 January 2025

REASONS FOR DECISION

1. This application for external review arises from a decision made by the Department of Justice (**the agency**) not to amend information in accordance with an application for amendment made under Part 3 of the *Freedom of Information Act 1992 (WA)* (**the FOI Act**) by 'P' (**the complainant**).
2. Following their birth, the complainant was adopted by an adoption order made under the *Adoption Act 1994 (WA)* (**Adoption Act**). To protect the complainant's privacy, I have decided not to identify the complainant or other individuals by name in the particular circumstances of this matter.

BACKGROUND

3. Prior to making their amendment application under the FOI Act, the subject of this external review, the complainant applied to the Registrar of Births, Deaths and Marriages (**the Registrar**) to correct the death certificates of their birth mother (**the deceased**) and their adopted parents (**adopted parents**), pursuant to the provisions in the *Births Deaths and Marriages Registration Act 1998 (WA)* (**BDMR Act**).
4. In particular, the complainant applied to the Registrar to amend the deceased's death certificate to include the complainant's name as the first born child, which the Registrar declined to do in light of section 75 of the Adoption Act.
5. On 1 March 2022, the complainant applied to the agency under the FOI Act to amend the death certificates of the deceased and their adopted parents. Additionally, the complainant applied to the agency under the FOI Act for access to information regarding the deceased's other children listed on her death certificate.
6. By notice of decision dated 21 July 2022 (**initial decision**), the agency decided:
 - not to amend the personal information of the deceased, on the ground that the complainant is not the closest relative of the deceased;
 - not to amend the personal information of the adopted parents, on the ground that 'another enactment provides a means or procedure by which that information can be amended', namely section 51 of the BDMR Act; and
 - the access application, regarding the other children, was not valid under section 12 of the FOI Act because the complainant did not pay the \$30 application fee required to make a valid application for non-personal information. The agency further advised the complainant that 'exemptions are likely to apply where consent of the relevant third party is not provided'.
7. On 26 July 2022, the complainant applied for internal review of the agency's decision not to amend the death certificates of the deceased and the adopted parents.
8. By internal review decision dated 5 August 2022, the agency confirmed its decision to refuse the complainant's amendment application.

9. On 18 August 2022, the complainant applied to my office for external review of the agency's decision to refuse to amend the death certificate of the deceased (**the disputed document**).

REVIEW BY THE INFORMATION COMMISSIONER

10. The agency provided my office with its FOI file maintained in respect of the complainant's amendment application and a copy of the disputed document.
11. On 12 September 2024, after considering all of the information before me, including submissions provided to me by the complainant on 15 September 2022, I provided the parties with a letter setting out my preliminary view of the matter (**preliminary view letter**). For the reasons given, it was my preliminary view that the agency's decision to refuse the amendment application, on the basis that the complainant is not the closest relative of the deceased for the purposes of the FOI Act, is justified.
12. In light of my preliminary view, I invited the complainant to accept my preliminary view or to provide me with further submissions by 31 October 2024.
13. The complainant confirmed they wished to pursue this matter and provided further submissions to my office on 9 October 2024 and 24 October 2024 (**further submissions**).

AMENDMENT OF PERSONAL INFORMATION

14. Section 45 of the FOI Act (**section 45**), insofar as it is relevant, provides as follows:

45. Right to apply for information to be amended

- (1) An individual (the *person*) has a right to apply to an agency for amendment of personal information about the person contained in a document of the agency if the information is inaccurate, incomplete, out of date or misleading.
- (2) A dead person's closest relative has a right to apply to an agency for amendment of personal information about the dead person and this section has effect as if the information were information about the closest relative.
- (3) ...
- (4) ...
- (5) This section does not apply if another enactment provides a means or procedure by which the person can have the information amended.

15. Therefore, section 45:

- (a) creates mechanisms whereby:
 - i. an individual can apply to an agency to amend their own personal information; and

- ii. the closest relative of a deceased person can apply to an agency to amend personal information about the deceased person.
- (b) provides that the right to apply to amend information under section 45 does not apply if another enactment provides a means or procedure by which the person can have the information amended.
16. Based on the submissions made by the parties in this matter, I am required to consider each of the points outlined above. I have addressed point (b) first because, if another enactment provides a means or procedure by which the complainant can have the disputed document amended, the rights under section 45 outlined at point (a) above fall away.

Does another enactment provide a means or procedure by which the complainant can have the disputed document amended?

17. In its internal review decision, the agency stated that – in addition to the complainant not being entitled to apply to amend the deceased’s death certificate under section 45(2) because they are not the deceased’s closest relative – ‘there is an existing process for the amendment of death certificates, and therefore the FOI amendment process does not apply to these records’. The complainant has questioned whether there is such an existing process, noting that, ‘according to information on the Registry website [the complainant] can’t request any amendment as [they are] not one of the children named on the death certificate’.
18. Section 45(5) states that ‘this section does not apply if another enactment provides a means or procedure by which the person can have the information amended’. The term ‘enactment’ is defined in section 5 of the *Interpretation Act 1984* (WA) to mean ‘a written law or any portion of a written law’. ‘Written law’ is defined in the same provision to mean ‘all Acts for the time being in force and all subsidiary legislation for the time being in force’.
19. In the context of information set out in the agency’s initial decision, I understand the agency submits that section 51 of the BDMR Act provides a means or procedure by which the complainant can have information in the disputed document amended; and that, in light of 45(5) of the FOI Act, the right to apply to amend personal information under section 45 does not apply.
20. The information on the agency’s website¹ regarding who can apply to correct a death certificate states as follows:

Who can apply to correct a certificate?

The information related to eligibility is general in nature and therefore not exhaustive.

...

¹ <https://www.wa.gov.au/service/justice/civil-law/correct-or-amend-birth-death-or-marriage-certificate>

Deaths

- The next of kin named on the death certificate ie spouse (married/de-facto), parent or child (16 years of age or over) of the deceased who is named on the death certificate.
- The funeral director
- Solicitor acting for Next of Kin or Estate
- Executor of the Estate.

21. I agree with the complainant that the above information suggests that, as the complainant is not regarded as the deceased's child under the law, it appears the complainant is not eligible to apply to correct information in the disputed document under the BDMR Act. However, I do not consider that the above information on the agency's website is determinative of this issue.

22. Section 51 of the BDMR Act states as follows:

51. Correction of Register

- (1) The Registrar may correct the Register-
 - (a) to reflect a finding made on inquiry under Division 2; or
 - (b) to bring the particulars contained in an entry about a registrable event into conformity with the most reliable information available to the Registrar of the registrable event.
- (2) The Registrar must correct the Register if ordered by a State court to do so.
- (3) The Registrar may correct the Register in accordance with a determination made by a court of another State or of the Commonwealth if the Registrar considers that it is appropriate to do so.
- (4) The Registrar is to correct the Register by adding or cancelling an entry in the Register or by adding, altering or deleting particulars contained in an entry.

23. As noted at [3] of this decision, before making their amendment application under the FOI Act, the complainant applied to the Registrar to amend the disputed document. The Registrar declined to make the requested amendment, in light of section 75 of the Adoption Act, on the ground the complainant is not the deceased's child under the law. As a result, the Registrar said they were not able to add the complainant's name to the disputed document as one of the deceased's children.

24. In my view, it therefore follows that section 51 of the BDMR Act does not provide a means or procedure by which the complainant can have information in the disputed document amended. As a result, I find that section 45(5) of the FOI Act does not operate in this case to exclude the complainant's right to apply to amend personal information under section 45 of the FOI Act.

Does the complainant have the right to apply to amend the disputed document under section 45(1)?

25. In response to my preliminary view letter, the complainant submits they have a right to apply to amend information in the disputed document under section 45(1). The complainant submits that:

As an individual person I believe I have a right to apply for an amendment of personal information under s45(1) of the FOI Act on the basis that the personal information is about myself and is missing from a Registry document, my birth mothers death certificate.

My thoughts are this makes the document –

1. Incomplete -missing my birth name and date of birth as a biological child.
 2. Out of date - this is information that came to light after the deceased's death and evidently unknown to the persons who supplied the death registration information.
 3. Misleading to a person who gets a copy of the certificate not to have official knowledge that the deceased had given birth to another child.
26. Section 45(1) states that '[a]n individual (the *person*) has a right to apply to an agency for amendment of personal information about the person contained in a document of the agency if the information is inaccurate, incomplete, out of date or misleading'.
27. Therefore, the complainant only has the right to apply to amend information in the disputed document under section 45(1) if the disputed document contains personal information about the complainant.
28. The term 'personal information' is defined in the Glossary to the FOI Act to mean:
- [I]nformation or an opinion, whether true or not, and whether recorded in a material form or not, about an individual, whether living or dead —
- (a) whose identity is apparent or can reasonably be ascertained from the information or opinion; or
 - (b) who can be identified by reference to an identification number or other identifying particular such as a fingerprint, retina print or body sample
29. I have examined the disputed document. It is the death certificate of the deceased. I am satisfied that it does not contain personal information about the complainant as defined in the FOI Act. As a result, I find that the complainant does not have a right to apply to amend the disputed document under section 45(1) of the FOI Act.

Does the complainant have the right to apply to amend the disputed document under section 45(2)?

30. Section 45(2) states that '[a] dead person's closest relative has a right to apply to an agency for amendment of personal information about the dead person and this section has effect as if the information were information about the closest relative'.

31. Therefore, the complainant only has the right to apply to amend personal information about the deceased in the disputed document under section 45(2) if they are the closest relative of the deceased.

The agency's submissions

32. In its initial decision and internal review decision, the agency submits, in summary, that:
- Section 75(b) of the Adoption Act states that “where an adoption order is made, for the purposes of the law of this state, the relationship between the adoptee and the adoptee 's births parents is to be treated as not being that of child and parent”.
 - Therefore, for the purposes of section 45(2) of the FOI Act, the complainant is not the deceased's closest relative and is therefore, unable to request an amendment to the deceased's personal information, on her behalf, under the provisions of the FOI Act.
 - The FOI Act allows only the closest living relative of a deceased person to amend their personal information. As the complainant is not, in law, the closest living relative of the deceased they cannot amend her information.

The complainant's submissions

33. The complainant claims they are the closet relative of the deceased. In their applications for internal and external review, in their correspondence to my office dated 15 September 2022, and in their further submissions in response to my preliminary view letter, the complainant submits, in summary, that:
- a. BDMR records show that the deceased:
 - gave birth to them and that child was adopted and given a new name and new parents; and
 - had two marriages and the husband of the second marriage is deceased.
 - b. Currently, these records have some ‘missing connections not acknowledged’. On that basis, the complainant claims they are the ‘closest/nearest relative/Next of Kin’ as the first born, biological child to the deceased.
 - c. They dispute they are ‘not lawfully considered to be the deceased’s child’. Adoption did not change their biological connection to their birth mother and they ‘did not get a new birth mother’. They had two mothers – birth and adopted – and they are related to both.
 - d. They wish to have their birth name and date of birth added to the disputed document, as the first-born child of the deceased, to complete the deceased’s life event history and to update the life event history of the complainant’s birth identity.

- e. The Registrar has provided the complainant with personal information about their birth and about the deceased. The complainant contends that, to be provided with such personal information, they are ‘considered to be a relative child’.
- f. Their amendment application is not an attempt to alter the legal status of their adoption; it is an attempt to ensure that the records pertaining to them and the deceased are complete and accurate.
- g. The subsections of section 75 of the Adoption Act are not absolute in their application; section 75(5) suggests that a ‘pre adoption relationship still exists’ after an adoption order is made.
- h. Section 80 of the Adoption Act indicates that ‘a Next of Kin/closest relative relationship still exists between the adoptee and the birth parent’.
- i. Sections 75(1) and 75(5) of the Adoption Act say ‘for the purposes of the law of this State’, not ‘for the purposes of the laws of this State’. Similarly, section 75(1)(c) refers to ‘the law of this State’. The complainant contends that this wording means that the law referred to in section 75 can only be the Adoption Act. That is, where an adoption order is made, the relationship between the adoptee and the adoptee’s birth parents is to be treated as not being that of child and parent only for the purposes of the Adoption Act and not for the purposes of any other law, such as the *Guardianship and Administration Act 1990* (WA) (**the GA Act**) or the FOI Act.
- j. Adoption is about ‘the legal transfer of Parenthood, Parental Rights and Responsibilities by the Birth Parents to the Adoptive Parent’ and does not mean the ‘birth mother-child relationship is cancelled’ or provide that the adopted child is ‘no longer a child of’ their birth mother. The complainant contends that the provisions in section 61E of the *Family Law Act 1975* (Cth), which refers to the effect of adoption on parental responsibility, and the report of the Victorian Law Reform Commission report ‘Review of the Adoption Act 1984 [Vic]’ in 2017 supports these claims.

Consideration – is the complainant the deceased’s closest relative?

- 34. The term ‘closest relative’ is not defined in the FOI Act.
- 35. By way of comment only, on 28 November 2024, the Western Australian Parliament passed the *Privacy and Responsible Information Sharing Act 2024* (**the PRIS Act**). The PRIS Act makes some consequential amendments to the FOI Act, including an amendment to section 45(2) (**the new section 45(2)**)². The PRIS Act was assented to on 6 December 2024. However, the new section 45(2) has not come into effect and is among the provisions in the PRIS Act that will commence on a date to be proclaimed.
- 36. When the new section 45(2) commences, the words ‘closest relative’ will be replaced with the words ‘nearest relative’ and will provide that:

² See section 235 of the PRIS Act

A dead person's nearest relative has a right to apply to an agency for amendment of personal information that relates to the dead person and this section has effect as if the information were information that relates to the nearest relative.³

37. Comments made by the Attorney General in the Legislative Assembly, on 28 November 2024, indicate that the term 'closest relative' in the FOI Act is being replaced with the term 'nearest relative' for consistency with the term 'nearest relative' in the GA Act.⁴
38. As the new section 45(2) has not yet commenced operation, I must apply the law as it currently stands. That is, I must consider whether the complainant is the 'closest relative' of the deceased for the purposes of the FOI Act.
39. In *Re J and Police Force of Western Australia* [2008] WAICmr 5, the former Acting Information Commissioner (**former Commissioner**) considered the meaning of the term 'closest relative' in section 32(2) of the FOI Act. The former Commissioner held that the definition of the term 'nearest relative' in the GA Act is a relevant guide to the interpretation of 'closest relative' for the purposes of the FOI Act. Section 3 of the GA Act defines 'nearest relative' as follows:

nearest relative in relation to a person means the first in order of priority of the following persons, who has attained the age of 18 years and is reasonably available at the relevant time –

- (a) a spouse or de facto partner;
- (b) a child;
- (ba) a step child;
- (c) a parent;
- (ca) a foster parent;
- (d) a brother or a sister;
- (e) a grandparent;
- (f) an uncle or aunt;
- (g) a nephew or niece;

and for the purposes of this definition –

- ...
- (j) definition shall be preferred to the other or any other of those relatives regardless of sex, and no distinction shall be made between relatives of the same age;

40. As already noted, the complainant submits that, as the deceased does not have a living spouse or de facto and, as they are the first born child of the deceased, the complainant is the nearest or closest relative of the deceased.

³ See the 'Blue Bill' version of the FOI Act on Parliament's website at [https://www.parliament.wa.gov.au/Parliament/Bills.nsf/3329DA2DC25F557148258B1E003267FF/\\$File/Freedom%20of%20Information%20Act%201992%20-%20MUPA%201%20B%28includes%20Bill%20Nos%20158%20and%20159%29.pdf](https://www.parliament.wa.gov.au/Parliament/Bills.nsf/3329DA2DC25F557148258B1E003267FF/$File/Freedom%20of%20Information%20Act%201992%20-%20MUPA%201%20B%28includes%20Bill%20Nos%20158%20and%20159%29.pdf) – the 'Blue Bill' shows the amendments to the FOI Act as a result of the amending provisions in the PRIS Act and the *Information Commissioner Act 2024* (WA)

⁴ Hansard, 6861-6863

41. I consider that the issue for me to determine in deciding whether the complainant is the deceased's closest relative is whether the complainant is the child of the deceased under the law, despite the adoption order.

42. Section 75 of the Adoption Act states:

75. Effect of adoption order

(1) Where an adoption order is made, for the purposes of the law of this State —

(a) the relationship between the adoptee and the adoptive parent is to be treated as being that of child and parent;
and

(b) the relationship between the adoptee and —

(i) the adoptee's birth parents; or

(ii) if the adoptee was previously adopted, the previous adoptive parent,
is to be treated as not being that of child and parent;

43. Accordingly, the above provision provides that when an adoption order is made, the relationship between the adoptee and the adoptee's birth parents is to be treated as not being that of child and parent, for the purposes of the law of this State. The GA Act is a law of this State. In my view, it therefore follows that, when an adoption order is made, the adoptee cannot be the nearest relative of their birth parent for the purposes of section 3(b) of the GA Act, or the closest relative of their birth parent for the purposes of the FOI Act.

44. I accept the complainant's submission that their adoption does not change who their birth mother was nor does it change their biological connection to their birth mother. As I understand it, the agency does not dispute that the deceased was the complainant's birth mother or that they were the first child born to her. I acknowledge the paradox that this seemingly creates and empathise with the situation this puts the complainant in.

45. As I understand it, the essence of the complainant's submissions is that the effect of an adoption order is limited to transferring parental rights and responsibilities and that the adoptee legally remains the child of their birth parents. Therefore, the complainant claims that, despite the adoption order made, they are the lawful child of the deceased and, as a result, the closest relative of the deceased.

46. I have considered the case law regarding the effect an adoption order has on the question of whether the deceased is the closest relative of the deceased.

47. In *Re Gordon (a pseudonym) (No 2)* [2020] NSWSC 673, the applicant, who had been adopted, sought an order from the Supreme Court of New South Wales to discharge the adoption order. The applicant had also brought proceedings in Queensland under the *Succession Act 1981* (Qld) for family provision in respect of his deceased father's estate.

48. Although the reasons the applicant sought an order to discharge the adoption order were in dispute between the parties, Hallen J observed:

There appears to be no dispute that, currently, [the applicant] does not have standing to make the application for a family provision order, because s 41(1) of the *Succession Act 1981* (Qld) permits an application to be made only by the deceased person's spouse, child or dependant. Unless [the applicant] is successful in discharging the adoption order, he will not be a person in respect of whom an order for additional provision may be made and his proceedings in Queensland will, presumably, be dismissed.⁵

49. In relation to the effect of an adoption order, His Honour relevantly stated:

[A]n adoption order is status changing. It severs, in law, but not in fact, the existing relationship of blood, and creates an adoptive relationship in place of the natural relationship, which in fact, although not in law, continues unchanged. New family ties are created which approximate blood ties. The child becomes part of his, or her, adoptive parents' family, solely through operation of law, and there is no necessity for any actual blood relationship to exist between them. He, or she, thereafter, is regarded, in law, as the child of the adoptive parents, and the adoptive parents are regarded in law as the parents of the adopted child. The adopted child also ceases to be regarded, in law, as the child of the birth parents and the birth parents cease to be regarded, in law, as the parents of the adopted child. The parental responsibility for the adopted child by the birth parents is also extinguished. By operation of law, a legal fiction is created.

An adoption order results, not only in the creation of a new legal status between individuals, but also in the destruction of the status as between others... An adoption order is the only order that permanently, and, subject to a discharge order, irrevocably, terminates the relationship between a parent and child. Accordingly, the act of adoption is regarded as possessing a peculiar finality....⁶

50. In *Roche -v- Douglas as Administrator of the Estate of Edward John Hamilton Rowan* (dec) [2000] WASC 146, the plaintiff brought an application under the *Inheritance (Family and Dependants Provision) Act 1972* (WA) (**Inheritance Act**) claiming that she was a child of the deceased and therefore entitled to make a claim for family provision under section 7(1)(c) of that Act.⁷
51. The plaintiff had been adopted by the deceased's mother. The defendant submitted that, as a result, the plaintiff was the deceased's sister, and that section 75 of the Adoption Act precluded the plaintiff from making a claim against the deceased's estate as his daughter.
52. Master Sanderson observed that, if the plaintiff was the daughter of the deceased, then she fell within the class of persons who can claim pursuant to section 7(1) of the Inheritance Act and that, if she was not the daughter of the deceased, then she had no right to claim under that Act.⁸ While Master Sanderson did not ultimately decide this

⁵ At [89]

⁶ At [178]

⁷ The plaintiff also sought an order from the Court to enable her to prove paternity by the deceased for the purposes of her family provision application.

⁸ At [2]

issue,⁹ he noted that ‘[t]his argument turns upon the meaning and effect of s 75 of the Adoption Act’ and that:

Prima facie, it would appear that s 75(1)(b) has the effect of putting the plaintiff outside the class of those people who can claim under s 7(1) of the Act. Such authority as there is on this question suggests this is the case: see *Dehnert v The Perpetual Executors and Trustees Association of Australia* [1954] HCA 47; (1954) 91 CLR 177.¹⁰

53. In 0906230 [2009] MRTA 2652, the State Administrative Tribunal noted that, in general, State legislation throughout Australia severs the legal ties between a child and their biological parents once a formal adoption has taken effect, citing section 75 of the Adoption Act as an example.¹¹
54. Having considered the case law, I am satisfied that the effect of the adoption order in this case, made under the Adoption Act, is that the legal ties between the deceased and the complainant were dissolved and, therefore, the complainant is not the child of the deceased for the purposes of the law. Further, I consider the case law does not support the complainant’s contention, cited at [33i] above, that where an adoption order is made, the relationship between the adoptee and the adoptee’s birth parents is to be treated as not being that of child and parent only for the purposes of the Adoption Act and not for the purposes of any other law.
55. I have considered the complainant’s submission, cited at [33g] above, that section 75(5) of the Adoption Act suggests that a pre-adoption relationship still exists after an adoption order is made. That provision states:

Despite subsections (1) to (4), for the purposes of the law of this State relating to sexual offences, being law for the purposes of which the relationship between persons is relevant, an adoption order, or the discharge of an adoption order, does not cause the cessation of any relationship that would have existed if the adoption order, or the discharging order (as the case may be) had not been made, and any such relationship is to be treated as existing in addition to any relationship that exists by virtue of the application of this section in relation to the adoption order or by virtue of the discharge of an adoption order.

56. While section 75(5) refers to the existence or continuation of a ‘pre-adoption relationship,’ that provision has very limited application, namely that the relationship continues to exist ‘for the purposes of the law of this State relating to sexual offences’. I do not consider this provision supports the complainant’s arguments.

I have also considered the complainant’s submission, cited at [33h] above, that section 80 of the Adoption Act indicates that ‘a Next of Kin/closest relative relationship still exists between the adoptee and the birth parent’. That provision states:

80. Death of party to adoption etc., CEO to notify certain persons

- (1) If the CEO is informed by the Registrar that an adoptee has died, the CEO is to inform the adoptee’s birth parents of the death if the CEO considers that —

⁹ For the reasons set out at [28]-[29]

¹⁰ At [27]

¹¹ At [6]. See also *Liang v Minister for Immigration* [2007] FMCA 1288 at [15]-[16] and *Syme -v- Arthur Metaxas as Executor of the Estate of Norman Frank Monck* [2005] WASC 152 at [2]

- (a) it is reasonably practicable to do so; and
 - (b) it is appropriate to do so, after having regard to the provisions of the relevant adoption plan.
- (2) If the CEO receives information that one of the parties to an adoption or a sibling of the adoptee (whether of the whole or half blood) has died, the CEO is to inform the other parties to the adoption, or the adoptee's siblings (whether of the whole or half blood), as the case may be, of the death so far as the CEO considers that it is reasonably practicable to do so.
- (3) The CEO does not have to inform a person under subsection (1) or (2) of a death —
- (a) if the person has, in a manner approved by the CEO, notified the CEO that the person does not wish to be so advised; or
 - (b) in special circumstances.

57. Section 80 imposes qualified obligations on the CEO of the agency to notify birth parents of the death of an adoptee and to notify other parties to the adoption, or the adoptee's siblings, of the death of one of the parties to an adoption or a sibling of the adoptee. In my view, these obligations do not support the complainant's contention that they are the child of the deceased in the eyes of the law.

58. Having considered all of the material before me, including the applicable law, I find that the complainant is not the deceased's closest relative for the purposes of the FOI Act. Therefore, the complainant does not have a right to apply to amend the disputed document under section 45(2) of the FOI Act.

Conclusion

59. For the reasons set out in this decision, I find that the decision of the agency not to amend information in accordance with the complainant's amendment application is justified. Accordingly, the decision of the agency is confirmed.
