



**Information and Privacy  
Commissioner/Ontario**  
**Commissaire à l'information  
et à la protection de la vie privée/Ontario**

# **ORDER P-478**

**Appeals P-9200763 and P-9200764**

**Ministry of Consumer and Commercial Relations**



80 Bloor Street West,  
Suite 1700,  
Toronto, Ontario  
M5S 2V1

80, rue Bloor ouest  
Bureau 1700  
Toronto (Ontario)  
M5S 2V1

416-326-3333  
1-800-387-0073  
Fax/Télé: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

# ORDER

## BACKGROUND:

The Ministry of Consumer and Commercial Relations (the Ministry) received two requests under the Freedom of Information and Protection of Privacy Act (the Act) for access to records relating to a criminal investigation of the requester's business activities. Specifically, the requester wanted all information in the Ministry files relating to himself, his employees and his companies.

The Ministry located records responsive to the requests and granted partial access; access to the remainder was denied citing sections 14(1)(b) and (d), 14(2)(a), 21 and 49(b) of the Act. The requester appealed the Ministry's denial of access and the claim that no other records exist.

The issues arising in these two appeals are the same and so they will be dealt with together.

The records consist of five letters of complaint filed with the Ministry about the appellant's business activities and four responses to those complaints.

Mediation was unsuccessful and notice that an inquiry was being conducted to review the Ministry's decisions was sent to the Ministry, the appellant and the three persons who had sent the letters of complaint (the affected parties). The appellant subsequently withdrew his request for one of the letters of complaint (Record 1) but still wants the Ministry's response to that letter (Record 2). However, since the appellant is not interested in the identity of that complainant, the name and address contained in Record 2 are not at issue.

Representations were received from the Ministry, the appellant and one affected person. As the Ministry made no reference to the exemption in section 14(1)(b) and stated that it was no longer relying on section 14(2)(a) as a basis for non-disclosure of the record, I will not be addressing those exemptions.

The records remaining at issue are:

- Record 2** Ministry's response to letter of complaint
- Record 3** letter of complaint
- Record 4** Ministry's response to Record 3
- Record 5** two-page letter of complaint and attached Court Order
- Record 6** Ministry's response to Record 5
- Record 7** follow-up letter by author of Record 5

**Record 8** Ministry's response to Record 7

**Record 9** Further letter of complaint from author of Records 5 and 7

The Ministry claimed exemptions for all the records citing sections 14(1)(d), 21 and 49(b).

## **ISSUES:**

The issues arising in this appeal are as follows:

- A. Whether the information contained in the records qualifies as "personal information" as defined in section 2(1) of the Act.
- B. Whether the records qualify for exemption under section 14(1)(d) of the Act.
- C. If the answer to Issues A and B is yes whether the discretionary exemption in section 49(a) of the Act applies.
- D. If the answer to Issue A is yes and the personal information is solely that of another individual, whether the mandatory exemption provided by section 21 of the Act applies.
- E. If the answer to Issue A is yes and the personal information is that of the appellant and another individual, whether the discretionary exemption provided by section 49(b) of the Act applies.
- F. Whether the Ministry's search for responsive records was reasonable in the circumstances.

## **SUBMISSIONS/CONCLUSIONS:**

**ISSUE A: Whether the information contained in the records qualifies as "personal information" as defined in section 2(1) of the Act.**

Section 2 reads, in part, as follows:

"personal information" means recorded information about an identifiable individual, including,

...

- (g) the views or opinions of another individual about the individual, and
- (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

In my view, the records contain personal information of the appellant only. Records 3, 5, 7 and 9 were written in the authors' professional capacity on corporate letterhead and do not contain information which qualifies as their personal information (Orders P-269, P-377, P-427).

Because I have found that the records contain the personal information only of the appellant, it is not necessary for me to consider Issues D and E.

**ISSUE B: Whether the records qualify for exemption under section 14(1)(d) of the Act.**

Section 14(1)(d) of the Act reads:

A head may refuse to disclose a record where the disclosure could reasonably be expected to,

disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source

In order for a record to qualify for exemption under section 14(1)(d), the matter to which the record relates must first fall within the following definition of the term "law enforcement" found in section 2(1) of the Act:

"law enforcement" means,

- (a) policing,
- (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and
- (c) the conduct of proceedings referred to in clause (b);

The Ministry, in its representations, states that the records were compiled as part of an investigation into the business activities of the appellant to determine whether there was a violation of the Bailiffs Act. This investigation was initiated after the Ministry received complaints alleging that the appellant and his companies had engaged in improper bailiff activities. A violation of the Bailiffs Act may lead to a prosecution in the Provincial Court. Having reviewed the records and the representations, I am satisfied that the matter to which the records relates falls within the definition of "law enforcement" found in section 2(1) of the Act.

It has been stated in a number of orders that in order to establish confidentiality under section 14(1)(d) of the Act, the Ministry must provide evidence of the circumstances in which the information was given (Orders 139, P-304).

The Ministry submits that its regulatory function can be greatly assisted by obtaining cooperation and information from members of the public and that individuals providing such information must feel free to do so without fear of reprisal or harassment. To prevent interference with complaints, the Ministry has a policy of not disclosing to anyone other than law enforcement agencies the identity of complainants.

One of the affected persons responded to the notice of inquiry and, while at first giving consent to the disclosure of Records 5, 7 and 9, later decided against releasing the records.

Having reviewed the representations of the parties and the contents of the records, I am of the view that disclosure of Records 3, 5, 7 and 9 could reasonably be expected to disclose the identity of confidential sources of information and find that these records qualify for exemption under section 14(1)(d) of the Act. Records 2, 4, 6 and 8 are responses to those records and I find that their disclosure would not reveal information supplied by a confidential source if the names and addresses are severed.

**ISSUE C: If the answer to Issues A and B is yes, whether the discretionary exemption in section 49(a) of the Act applies.**

Section 49(a) provides an exception to the general right of access to personal information by the person to whom the information relates. It reads:

A head may refuse to disclose to the individual to whom the information relates personal information,

where section 12, 13, 14, 15, 16, 17, 18, 19, 20 or 22 would apply to the disclosure of that personal information; [emphasis added]

In Issue B, I found that all of Records 3, 5, 7 and 9 and parts of Records 2, 4, 6 and 8 qualify for exemption under section 14(1)(d) of the Act. In reviewing the Ministry's representations regarding its exercise of discretion in favour of refusing to disclose the records, I have found nothing to indicate that the exercise of discretion was improper and will not alter it on appeal.

**ISSUE F: Whether the Ministry's search for responsive records was reasonable in the circumstances.**

In response to the appellant's claim that other records including letters, telephone notes, electronic mail and other correspondence existed in eight specified locations, the Ministry provided a sworn affidavit by the Manager, Central Registration (Ministry of Consumer and Commercial Relations) and Registrar, Bailiffs Act, which outlines the steps taken to locate the requested records. Those steps included:

- supervised manual search of files in which records concerning bailiff (appointed and unappointed) activities would normally be found;
- personal check of archive document containing list of all files sent from Central Registration to the Ontario Archives;
- search of the records of the former Registrar, Bailiffs Act;
- search of the Sheriff's office, Judicial District of Ottawa-Carleton.

The Manager, Central Registration and Registrar, Bailiffs Act states that the Ministry's Ottawa Consumer Services Branch does not handle bailiffs' complaints and that no further records have been located. The Manager confirms that no records responsive to the appellant's request have been destroyed or sent to the Archives.

In his representations, the appellant submitted a copy of an affidavit by a named individual as evidence of another record in existence at the Ministry. While not specifically addressed in the Ministry's affidavit, the Ministry explained to the appellant in their letter of November 12, 1992 that, while they did receive an application for appointment as a bailiff from such a person, they returned all documentation to the author when the application was abandoned, and no copies were retained by the Ministry.

Having reviewed the representations and the affidavit submitted to me, I am satisfied that the search conducted by the Ministry for records responsive to the appellant's request was reasonable in the circumstances.

**ORDER:**

1. I order the Ministry to disclose to the appellant Records 2, 4, 6 and 8, with severance of the names and addresses of the affected parties, within 35 days of the date of this order and not earlier than the thirtieth (30th) day following the date of this order.

2. I uphold the Ministry's decision not to disclose Records 3, 5, 7 and 9.
3. In order to verify compliance with the provisions of this order, I order the Ministry to provide me with a copy of the record which is disclosed to the appellant pursuant to Provisions 1 and 2 of this order, **only** upon request.

Original signed by: \_\_\_\_\_  
Holly Big Canoe  
Inquiry Officer

\_\_\_\_\_ June 11, 1993