



Information and Privacy  
Commissioner/Ontario

Commissaire à l'information  
et à la protection de la vie privée/Ontario

## **ORDER P-752**

Appeal P-9400179

Ministry of Community and Social Services



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## **NATURE OF THE APPEAL:**

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). The appellant requested from the Ministry of Community and Social Services (the Ministry) copies of records relating to welfare fraud and to welfare recipients with substantial financial assets. The records which are responsive to the request consist of a 70-page report entitled "Draft Advice to the Deputy Minister on Fraud and EFT Control Options in the FBA Program" (the report) and various documents containing relevant background materials used in the preparation of the report (the background files). The background files consist of five groups of records described as follows:

- Section 1 - Correspondence - Contract - 17 records
- Section 2 - General Background - 9 records
- Section 3 - Comprehensive Income Maintenance System (CIMS) Background  
- 4 records
- Section 4 - Program Monitoring Background - 5 records
- Section 6 - Electronic Funds Transfer - 6 records

It should be noted that there is no Section 5. The Ministry relies on the following exemptions contained in the Act to deny access to all of these records:

- advice or recommendations - section 13(1)
- law enforcement - sections 14(1)(b) and (c)
- facilitate commission of unlawful act - section 14(1)(l)
- economic and other interests - sections 18(1)(c) and (d)
- proposed plans, projects or policies of an institution - section 18(1)(g)
- invasion of privacy - sections 2(1) and 21(1)

A Notice of Inquiry was provided to the Ministry and the appellant. Representations were received from the Ministry only.

## **PRELIMINARY MATTER**

### **RECORDS RESPONSIVE TO THE REQUEST**

During the mediation stage of this appeal, the appellant maintained that additional records responsive to his request should exist. To support this position, he identified a newspaper article which refers to some of the records he is seeking. In response, the Ministry identified two reports which were mentioned in the article, entitled "GA Outstanding Overpayments" and "Comprehensive Income Maintenance System Adhoc A200-126 - Overpayment Report as of Dec 31, 1993(ORFUS)".

The Ministry took the position that these records were not responsive to the appellant's request and, thus, chose not to issue a decision letter respecting these documents. The Ministry agreed, however, to forward a copy of these records to the Commissioner's office.

Although the Notice of Inquiry requested the Ministry to provide representations on the issue of whether these records are responsive, it has chosen not to do so. Given the very broad nature of the appellant's request, and following my independent review of the records, I am satisfied that these two reports are in fact responsive to the appellant's request. The result is that I must order the Ministry to issue an appropriate decision letter. So as not to delay the resolution of this appeal, I will deal with the remaining records for which the Ministry has made an access decision.

## **DISCUSSION:**

### **EXEMPTIONS AND TESTS**

I will now more fully describe the exemptions which the Ministry has claimed in conjunction with the tests developed by the Commissioner's office to determine when these exemptions will apply to particular records.

#### **Advice or Recommendations - Section 13(1)**

Section 13(1) of the Act states that:

A head may refuse to disclose a record where the disclosure would reveal advice or recommendations of a public servant, any other person employed in the service of an institution or a consultant retained by an institution.

It has been established in a number of previous orders that advice and recommendations for the purpose of section 13(1) must contain more than mere information. To qualify as "advice" or "recommendations", the information contained in the records must relate to a suggested course of action, which will ultimately be accepted or rejected by its recipient during the deliberative process.

#### **Law Enforcement - Sections 14(1)(b) and (c)**

Sections 14(1)(b) and (c) provide that:

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

- (b) interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
- (c) reveal investigative techniques and procedures currently in use or likely to be used in law enforcement.

The purpose of the section 14(1)(b) exemption is to preclude access to documents in circumstances where disclosure will interfere with an ongoing investigation.

In order to constitute an "investigative technique or procedure" for the purposes of section 14(1)(c), it must be established that the disclosure of the technique or procedure to the public would hinder or compromise its effective utilization. The fact that a particular technique or procedure is generally known to the public would normally lead to the conclusion that the disclosure would not compromise the effective utilization of the technique or procedure for the purposes of section 14(1)(c).

### **Facilitate Commission of Unlawful Act - Section 14(1)(l)**

Section 14(1)(l) of the Act provides that:

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

facilitate the commission of an unlawful act or hamper the control of crime.

### **Economic and Other Interests - Sections 18(1)(c) and (d)**

Sections 18(1)(c) and (d) of the Act state that:

A head may refuse to disclose a record that contains,

- (c) information whose disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;
- (d) information where the disclosure could reasonably be expected to be injurious to the financial interests of the Government of Ontario or the ability of the Government of Ontario to manage the economy of Ontario.

In order to qualify for exemption under sections 18(1)(c) or (d) of the Act, the Ministry must successfully demonstrate a clear and direct linkage between the disclosure of the information contained in the records and the harms alleged which could result in injury to the institution's economic interests or the financial interests of the Government of Ontario.

### **Proposed Plans, Projects or Policies of an Institution - Section 18(1)(g)**

[IPC Order P-752/September 12, 1994]

In order to qualify for exemption under subsection 18(1)(g) of the Act, an institution must establish that a record:

1. contains information including proposed plans, policies or projects; and
2. that disclosure of the information could reasonably be expected to result in:
  - (i) premature disclosure of a pending policy decision, or
  - (ii) undue financial benefit or loss to a person.

Each element of this two-part test must be satisfied.

### **Invasion of Privacy - Sections 2(1) and 21**

Under section 2(1)(h) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including 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.

Section 21(1)(f) of the Act prohibits an institution from releasing the personal information of an individual except where such disclosure would not constitute an unjustified invasion of that individual's personal privacy.

### **APPLICATION OF EXEMPTIONS AND TESTS TO THE RECORDS AT ISSUE**

I will now consider the exemptions claimed by the Ministry in light of the tests and interpretations which I have set out to determine whether the exemptions apply to the records at issue. I have considered the representations of the Ministry and conducted an independent review of each of the records at issue in reaching my decision.

### **Advice or Recommendations - Section 13(1)**

I find that the following records are exempt from disclosure, either in whole or in part, under section 13(1) of the Act.

Record 1-5: Cheque Indemnification Paper (Pages 3, 4, 5 and 6 as highlighted)

[IPC Order P-752/September 12, 1994]

- Record 1-9: Weightman Paper (Paragraphs 6 and 7)
- Record 1-11: Program Trends (exempt in its entirety)
- Record 1-12: CIMS Electronic Funds Transfer (Page 2 as highlighted)
- Record 1-14: Peat Marwick Report on EFT (Pages 3 and 7 as highlighted)
- Record 4-3: Cheque Replacement Procedures Paper (Pages 9, 10 and 13 as highlighted)
- Record 4-5: Report on Monitoring Activities (Pages 3, 4, 5, 6, 7, 8, 9, 21, 22, 23, 25, 26, 27, 33, 35, 36, 37, 41, 44, 49, 47, 51, 57, 59, 62 and 64 as highlighted)

**Law Enforcement - Sections 14(1)(b) and (c)**

I find that none of the records at issue in this appeal are exempt under either sections 14(1)(b) or (c) of the Act.

**Facilitate Commission of Unlawful Act - Section 14(1)(l)**

I find that the following records qualify for exemption under section 14(1)(l) of the Act.

- Record 1-7: CIMS/FRAUD/EFT AUDIT Minutes of Meeting of September 24, 1993 (Page 1 as highlighted)
- Record 4-3: Cheque Replacement Procedures Paper (Page 6 as highlighted)

**Economic and Other Interests - Section 18(1)(d)**

The Ministry submits that the report entitled "Draft Advice to the Deputy Minister on Fraud and EFT Control Options in the Family Benefits Act Program" outlines internal control weaknesses within the current social assistance system, and highlights system vulnerabilities. The Ministry further submits that the disclosure of this record could lead to abuses of the system which would increase the incidence of social assistance fraud, resulting in financial loss for the Province.

I have carefully reviewed this record and the Ministry's representations and I am satisfied that its disclosure could reasonably be expected to be injurious to the financial interests of the Government of Ontario. Therefore, I find that those portions of this record which I have highlighted qualify for exemption under section 18(1)(d) of the Act.

I also find that the following records qualify for exemption under section 18(1)(d) of the Act.

- Record 1-6: Cost Containment Resourcing Requirements (Page 5 as highlighted)
- Record 1-7: CIMS/FRAUD/EFT AUDIT Minutes of Meeting of September 24, 1993 (Page 2 as highlighted)

### **Invasion of Privacy - Sections 2(1) and 21**

Section 21 of the Act prohibits the disclosure of personal information to any person other than the individual to whom the information relates except in certain circumstances listed under section 21(1). The only representations which have been provided to me weigh in favour of finding that the section 21 mandatory exemption should apply in the present case. Consequently, I find that Records 6-4 and 6-6 are exempt from disclosure in their entirety pursuant to section 21 of the Act.

### **REASONABLENESS OF SEARCH**

In this appeal, the institution has acknowledged that additional records responsive to the appellant's request may exist. During the mediation stage of the appeal, the Ministry advised the Commissioner's office that the appellant's request was forwarded to at least three separate branches of the Ministry. Each branch was directed to conduct a search for responsive records. The Ministry indicated that only one of the branches responded but that there are at least two additional decisions pending on records which are responsive to the appellant's request from the other branches.

In my view, in order to properly discharge its obligations under the Act, the Ministry must provide me with sufficient evidence which shows that it has made a **reasonable** effort to identify and locate records responsive to the request. The search which the Ministry undertakes must be conducted by knowledgeable staff in locations where the records in question might reasonably be located.

Although the Ministry was asked to provide representations on the search for the responsive records, it has chosen not to do so. Accordingly, since I have not been provided with any evidence on the nature and extent of the search undertaken for records responsive to the request, and in view of the fact that the Ministry has acknowledged that additional records may exist, it is my view that the Ministry's search for records was not reasonable in the circumstances of this appeal.

### **ORDER:**

1. I uphold the Ministry's decision to deny access to those portions of the report entitled "Draft Advice to the Deputy Minister on Fraud and EFT Control Options in the FBA Program" and Records 1-5, 1-6, 1-7, 1-9, 1-11, 1-12, 1-14, 4-3, 4-5, 6-4 and 6-6 which are highlighted on the copy of the records provided to the Ministry's Freedom of Information and Privacy Protection Co-ordinator. The highlighted portions of the records are **not** to be disclosed.
2. I order the Ministry to disclose the remaining records to the appellant within fifteen (15) days of the date of this order.
3. I order the Ministry to make a decision on access to the reports entitled the "GA Outstanding Overpayments" and "Comprehensive Income Maintenance System Adhoc A200-126 - Overpayment Report as of Dec 31, 1993(ORFUS)". I order this decision to be made and forwarded to the appellant within thirty (30) days of the date of this order in accordance with sections 26 and 29 of the Act, without recourse to a time extension.
4. I order the Ministry to provide a decision letter to the appellant regarding access to any responsive records which are located in the other branches of the Ministry to which the request was originally forwarded, in accordance with sections 26 and 29 of the Act, considering the date of this order as the date of the request and without recourse to a time extension.
5. I order the Ministry to provide me with a copy of the decision letters referred to in Provisions 3 and 4 within thirty (30) days of the date of this order. These should be forwarded to my attention, c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.
6. In order to verify compliance with this order, I reserve the right to require the Ministry to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 2.

Original signed by: \_\_\_\_\_  
Donald Hale  
Inquiry Officer

\_\_\_\_\_ September 12, 1994