



Information and Privacy
Commissioner/Ontario

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

ORDER P-967

Appeal P-9500020

Ministry of Community and Social Services



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/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The Ministry of Community and Social Services (the Ministry) received a request under the Freedom of Information and Protection of Privacy (the Act) for access to the contents of the eligibility review officer's (ERO) file, the parental support worker's file, the Ministry's corporate file and any other file pertaining to the requester. The Ministry granted partial access to the responsive records. The requester appealed the decision to deny access to the remaining records.

The records requested were generated as part of an investigation conducted by the Ministry to determine whether the appellant was entitled to continue to receive social assistance as a single person under the Family Benefits Act (the FBA).

The records to which the Ministry denied access consist of the ERO report, letters to and from the Ministry, lists of witnesses and of documents for transfer to the police, "will state" documents, EFT enquiry sheets and declarations. The records are listed in Appendix "A" to this order and all have been withheld in their entirety with the exception of Records 34, 35 and 36 which were withheld in part.

The Ministry relies on the following exemptions to deny access to the records:

- law enforcement/discretion to refuse requester's own information - sections 14(1) and 49(a)
- invasion of privacy - section 49(b)

During mediation, the appellant confirmed that the scope of the request was limited to the personal information of the appellant and the alleged co-resident. The alleged co-resident has provided written consent to this office regarding disclosure of his personal information to the appellant.

A Notice of Inquiry was provided to the appellant and the Ministry. Representations were received from both parties. The Ministry has indicated that it is now prepared to disclose Record 9 which is therefore no longer at issue.

PRELIMINARY MATTER

In its representations, the Ministry has raised the possible application of sections 14(1)(g) and 14(2)(a) to some of the records.

It has been determined in previous orders that the Commissioner has the power to control the process by which inquiry is undertaken (Orders P-345 and P-537). This includes the authority to set time limits for the receipt of representations and to limit the time during which an institution can raise discretionary exemptions not claimed in its decision letter.

Upon receipt of the letter of appeal, the Ministry was notified, by way of a Confirmation of Appeal notice, that it had 35 days from the date of the notice to raise any additional discretionary exemptions not claimed in the decision letter.

In Order P-658, Inquiry Officer Anita Fineberg concluded that in cases where a discretionary exemption is claimed late in the appeals process, a decision-maker has the authority to decline to consider the discretionary exemption. I agree with Inquiry Officer Fineberg's reasoning and adopt it for the purposes of this appeal.

The Ministry has provided no explanation for the delay in raising the additional discretionary exemptions. In my view, a departure from the 35-day timeframe is not justified in the circumstances of this appeal. Therefore, I will not consider the application of sections 14(1)(g) and 14(2)(a) in this order.

DISCUSSION:

PERSONAL INFORMATION

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

I have carefully reviewed the information in all the records. I find that all of the records contain information which relates to the appellant and/or the alleged co-resident. I also find that some of the records contain information which relates to other identifiable individuals.

The appellant indicates that she is only seeking access to the information which relates to herself and the alleged co-resident.

I find that Records 10, 11, 13, 14, 15, 17, 18, 19, 20, 21, A22, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32 and 33 contain personal information of **only** the appellant and/or the alleged co-resident.

I find that Records 1, 2, 3, 4, 5, 6, 7, 8, 12 and 16 and the withheld portions of Records 34, 35 and 36 contain personal information which relates to the appellant, the alleged co-resident **and** other identifiable individuals. The information relating to other identifiable individuals in Records 3, 4 and 16 is distinct and can be severed out. I have highlighted in pink the portions on Records 3, 4 and 16 which relate to other identifiable individuals and which are not at issue in this appeal. The personal information in the remaining records is, in my view, too intertwined to distinguish, given the issues and the nature of the information in the records.

In addition, various records contain references to certain individuals. In my view, these references appear by virtue of their employment functions or duties and do not constitute the personal information of these individuals.

DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION

Under section 49(a) of the Act, the Ministry has the discretion to deny access to an individual's own personal information in instances where certain exemptions would otherwise apply to that information. The Ministry submits that sections 14(1)(a) and (b) apply to Records 1-34 including Record A22.

Sections 14(1)(a) and (b) state:

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

- (a) interfere with a law enforcement matter;
- (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.

In order for a record to qualify for exemption under these sections, the investigation which generated the records must first satisfy the definition of the term "law enforcement" as found in section 2(1) of the Act. This definition reads as follows:

"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).

Previous orders of the Commissioner have found that investigations conducted under section 19 of the FBA qualify as "law enforcement matters" for the purpose of section 2(1) of the Act (Order 139).

With respect to sections 14(1)(a) and (b), the Ministry states that the information in the records relates to an investigation into the appellant's continuing eligibility for welfare benefits. The Ministry submits that the matter is ongoing as a trial date is pending and a hearing is scheduled before the Social Assistance Review Board (SARB). It is the Ministry's position that the investigation and law enforcement matter is ongoing until it is disposed of by SARB and/or the courts.

The Ministry points out that alternative avenues of access to the records are available to the appellant, at the appropriate time, through the hearings process before SARB and the discovery process in the event of criminal proceedings. The Ministry submits that disclosure of the records through a request filed under the Act would be premature and would prejudice the Ministry's position at the SARB hearing.

I have carefully reviewed the information in the records together with the representations of the parties. I find that disclosure of the information in Records 1, 2, 5, 6, 7, 8, 10, 11, 12, 13, 14, 23, 24, 25, 26, 27, 29, 31, 33, 34 and the last page of Record 30 could reasonably be expected to interfere with law enforcement matters. I therefore find that Records 1, 2, 5-8, 10-14, 23-27, 29, 31, 33, 34 and the last page of Record 30 are exempt from disclosure under section 14(1)(a), and section 49(a) of the Act applies.

Based on the evidence before me and the information in the records, I am not satisfied that a reasonable possibility exists that disclosure of the information in Records 3, 4, 15, 16, 17, 18, 19, 20, 21, 22, A22, 28, 32 and the first four pages of Record 30 would lead to the harm alleged in 14(1)(b) and, therefore, these records are not exempt from disclosure.

The Ministry has not claimed any other discretionary exemption applies to Records 3, 4, 15-21, 22, A22, 28, 32 and the first four pages of Record 30; no mandatory exemption applies and, therefore, these records should be disclosed to the appellant. It is only the non-highlighted portions of Records 3, 4 and 16 which are to be disclosed to the appellant.

RECORDS THAT CONTAIN THE PERSONAL INFORMATION OF THE APPELLANT AND OTHER IDENTIFIABLE INDIVIDUALS

INVASION OF PRIVACY

I have previously found that Records 1, 2, 5, 6, 7, 8, 12, 34, 35 and 36 contain information that relates to both the appellant and/or the alleged co-resident **and** other identifiable individuals. I have also found the information contained in Records 1, 2, 5-8, 12 and 34 is exempt from disclosure under section 49(a) and, therefore, I will only consider the application of section 49(b) to Records 35 and 36.

Under section 49(b) of the Act, where a record contains the personal information of both the appellant and another individual and the Ministry determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the Ministry has the discretion to deny the requester access to that information.

Sections 21(2), (3) and (4) of the Act provide guidance in determining whether the disclosure of personal information would constitute an unjustified invasion of personal privacy. Where one of the presumptions found in section 21(3) applies to the personal information found in a record, the only way such a presumption against disclosure can be overcome is where the personal information falls under section 21(4) or where a finding is made that section 23 of the Act applies to the personal information.

The Ministry submits that the presumption in section 21(3)(b) applies to the information withheld in Records 35 and 36. The Ministry states that the personal information was compiled and is identifiable as part of an investigation into a possible violation of law, a compliance investigation under the FBA.

I have carefully reviewed the information in the records and I find as follows:

- (1) Records 35 and 36 contain information which was compiled and is identifiable as part of an investigation into a possible violation of law (the FBA) and accordingly, the presumed unjustified invasion of privacy in section 21(3)(b) applies.
- (2) None of the personal information contained in the records falls under section 21(4) and the appellant has not raised the possible application of section 23 of the Act.
- (3) I find that disclosure of the information in Records 35 and 36 would constitute an unjustified invasion of privacy of the other individuals and the records are exempt from disclosure under section 49(b) of the Act.

ORDER:

1. I uphold the Ministry's decision to deny access to Records 1, 2, 5-8, 10-14, 23-27, 29, 31, 33, 34 in their entirety together with the last page of Record 30.
2. I uphold the Ministry's decision to deny access to those parts of Records 35 and 36 which have been withheld and to those portions of Records 3, 4, and 16 which have been highlighted on the copy of the records provided to the Freedom of Information and Privacy Co-ordinator with a copy of this order.
3. I order the Ministry to disclose to the appellant Records 9, 15, 17, 18, 19, 20, 21, 22, A22, 28 and 32 in their entirety together with the first four pages of Record 30 and the non-highlighted portions of Records 3, 4 and 16 within fifteen (15) days of the date of this order.
4. 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 3.

Original signed by: _____
Mumtaz Jiwan
Inquiry Officer

July 27, 1995

APPENDIX A

INDEX OF RECORDS AT ISSUE Appeal Number P-9500020

RECORD NUMBER(S)	DESCRIPTION OF RECORDS WITHHELD IN WHOLE OR IN PART	EXEMPTIONS OR OTHER SECTION(S) CLAIMED	DECISION ON RECORD
1	Eligibility Review Report	14(1)	Upheld
2	List for transfer of file to Police	14(1)	Upheld
3	Accused Information Form	14(1)	Disclose (in part)
4	Synopsis	14(1)	Disclose (in part)
5	Witness List	14(1)	Upheld
6	Eleven "Will State" Documents	14(1)	Upheld
7	Documentary Evidence	14(1)	Upheld
8	Client History Sheets	14(1)	Upheld
9	Allegation Information	Withdrawn	Disclose
10	Warranty Certificate	14(1)	Upheld
11	Letter from Hospital	14(1)	Upheld
12	Letter from Public School	14(1)	Upheld
13	Enermark Document	14(1)	Upheld
14	Scotiabank Document	14(1)	Upheld
15	Scotiabank Document	14(1)	Disclose
16	Letter to Public School	14(1)	Disclose (in part)
17	Letter to Hospital	14(1)	Disclose
18	Letter to Acme Building and Construction	14(1)	Disclose
19	Faxed Sheet to Ministry of Transport	14(1)	Disclose
20	Letter to Prudential	14(1)	Disclose
21	Fax Confirmation Sheet	14(1)	Disclose
A22	Fax Cover Sheet	14(1)	Disclose

RECORD NUMBER(S)	DESCRIPTION OF RECORDS WITHHELD IN WHOLE OR IN PART	EXEMPTIONS OR OTHER SECTION(S) CLAIMED	DECISION ON RECORD
22	Letter from Prudential	14(1)	Disclose
23	Drivers' Licence Histories	14(1)	Upheld
24	Letter from Royal Bank	14(1)	Upheld
25	Hydro-Electric Documents	14(1)	Upheld
26	Realty Tax Documents	14(1)	Upheld
27	Royal Bank Document	14(1)	Upheld
28	Letter from Income Maintenance Officer	14(1)	Disclose
29	Statement of Account	14(1)	Upheld
30	Letter to Bank of Nova Scotia	14(1)	Upheld (in part)
31	VISA Printouts	14(1)	Upheld
32	EFT Enquiry Sheets	14(1)	Disclose
33	Copy of Contract	14(1)	Upheld
34	Referral for Eligibility Review Form (part)	14(1) and 49(b)	Upheld
35	Declaration by Witness (part)	49(b)	Upheld
36	Declaration by Witness (part)	49(b)	Upheld