



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

ORDER P-1198

Appeal P-9600012

Ministry of the Attorney General



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NATURE OF THE APPEAL:

The Ministry of the Attorney General (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to the contents of the requester's file with the Family Support Plan (FSP) and access to the procedures required to be followed by the Ministry staff when issuing a garnishing order. The requester also sought continuing access, under section 24(3) of the Act, to the information in his file.

The Ministry identified 67 pages as being responsive to the request. The Ministry did not provide an index of records to the appellant; however, the pages are numbered from 1 to 67. For ease of reference for the appellant, I will refer to the records by page number. The Ministry granted partial access to the contents of the file. The requester, the payor spouse, appealed the denial of access.

Access was denied to 23 pages in whole and to 14 pages in part. These 37 pages include computer printouts, letters, support filing forms and facsimile transmittals. The Ministry denied access to the records on the basis of the following exemptions in the Act:

- advice or recommendations - section 13
- law enforcement - sections 14(1)(a), (b), (c) and (d)
- relations with another government - section 15(b)
- invasion of privacy - sections 21(1) and 49(b)
- discretion to refuse requester's own information - section 49(a)

In its decision letter, the Ministry did not address the appellant's request for continuing access nor his request for access to the procedures relating to the issuing of a garnishing order. On this basis, the appellant claims that such records should exist. Therefore, the issues of the appellant's right to continuing access and the reasonableness of the Ministry's search for responsive records are included in this appeal.

During mediation, the appellant indicated that he was not seeking access to the personal information of other individuals. I will address this matter in my discussion under personal information. A Notice of Inquiry was provided by the Commissioner's office to the appellant and the Ministry. Representations were received from the Ministry only.

Subsequent to the Notice of Inquiry and prior to the deadline for the receipt of representations, the Ministry responded to the appellant with respect to his request for continuing access and the procedures relating to the issuing of a garnishing order. Copies of the Ministry's decision letters addressed to the appellant have been provided to the Commissioner's office. The decision letters also advise the appellant of his right to file a separate appeal in respect of each decision. Therefore, it is not necessary for me to address the issues of the appellant's right to continuing access and the reasonableness of the Ministry's search for responsive records 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 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.

The appellant has indicated that he is not seeking access to the personal information of other individuals. I have reviewed the information in the records and I find that the information that relates **solely** to the appellant has already been disclosed to him by the Ministry. On the basis of the appellant’s position that he is not seeking access to other individuals’ personal information, the names, addresses, telephone numbers and other personal identifiers of these individuals are removed from the scope of this appeal. I find that the information that remains relates to both the appellant and other identifiable individuals and is intrinsically linked. Given the nature of the records, it is my view that the personal information of the appellant is intertwined with that of other identifiable individuals.

The Ministry has claimed that sections 13(1), 14(1), 15(b) and 49(a) apply to exempt some of the records. The Ministry has also claimed the application of sections 21(1) and 49(b) to some of these records and the remaining records. However, I have found that all of the records contain the personal information of the appellant. Therefore, I will first consider the application of sections 14(1), 49(a) and 49(b) to the records.

For clarification purposes, I will set out each of the pages and the exemptions that I will consider:

Law Enforcement and Discretion to refuse requester’s own information (sections 14(1) and 49(a)): pages 3, 5 (in part) and pages 48, 63, 64, 65, 66 and 67 (in their entirety).

Invasion of privacy (section 49(b)): pages 1, 2, 6, 7, 8, 9, 13, 25, 26, 27, 28, 30, 32, 33, 34, 35, 36, 37, 50, 52, 53, 56, 57, 59, 60 (in their entirety) and portions of pages 14, 24, 54 and 58.

I will first consider the application of sections 14(1) and 49(a) to the records.

DISCRETION TO REFUSE REQUESTER’S OWN INFORMATION

I have found that the records contain the appellant’s personal information. Section 47(1) of the Act gives individuals a general right of access to their own personal information held by a government body. Section 49 provides a number of exceptions to this general right of access.

Under section 49(a) of the Act, the institution has the discretion to deny access to an individual’s own personal information in instances where certain exemptions would otherwise apply to that information. Section 49(a) states as follows:

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 order to determine whether the exemption provided by section 49(a) applies in this case, I will consider the application of section 14 to the records.

LAW ENFORCEMENT

The Ministry has claimed that the exemptions in sections 14(1)(a), (b), (c) and (d) apply to pages 3, 5, 48, 63, 64, 65, 66 and 67 which consist of computer printouts, support filing forms and a letter. I will first consider the application of sections 14(1)(c) and (d) to these records.

Sections 14(1)(c) and (d) of the Act provide:

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

- (c) reveal investigative techniques and procedures currently in use or likely to be used in law enforcement;
- (d) 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 either of these sections, the matter to which the record relates must first satisfy the definition of the term “law enforcement”, found in section 2(1) of the Act.

This definition states:

“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).

In Order P-589, former Inquiry Officer Asfaw Seife found that information gathered by the FSP Branch under the Family Support Plan Act (the FSPA) in enforcement of a support deduction order issued by the court against the appellant was a law enforcement matter. I agree with Inquiry Officer Seife’s determination and adopt it for the purposes of this appeal.

The Ministry provides some background information on the role of the FSP Branch. The FSPA established an administrative system to address the significant social problem of spousal and child support arrears. As a result, all support orders made by a court in Ontario, on or after July 2, 1987, are filed in the Director’s office by the Court and enforced by the Director. The

Director acts as a conduit through which the support monies flow. This minimizes the contact between the support recipient and the payor recipient, as the relationship is often adversarial. Information for the purpose of order enforcement is also collected by the Director.

The Ministry submits that section 14(1)(d) applies because disclosure of the information in the records could reasonably be expected to disclose the identity of a confidential source or disclose information furnished only by the confidential source. The Ministry states that the information in the records was provided to the Director for the purpose of enforcement of court orders issued under the FSPA. This information is necessarily provided by confidential sources and therefore, must be protected from disclosure.

The Ministry states further that section 14(1)(c) applies because the records contain specific details about the investigative techniques and procedures employed by the Ministry as part of its enforcement mechanisms.

I have reviewed the information in the records and I am satisfied that disclosure of the information in pages 48 and 63-67 could reasonably be expected to disclose information furnished only by the confidential source. I find that disclosure of the withheld portions of pages 3 and 5 could reasonably be expected to reveal investigative techniques and procedures currently in use. Therefore, these records qualify for exemption under sections 14(1)(c) and (d) and section 49(a) of the Act applies.

INVASION OF PRIVACY

I will now consider the application of section 49(b) of the Act to the remaining records.

Under section 49(b) of the Act, where a record contains the personal information of both the appellant and other individuals and the institution determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the institution 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 disclosure of personal information would result in an unjustified invasion of the personal privacy of the individual to whom the information relates. 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.

If none of the presumptions contained in section 21(3) apply, the Ministry must consider the application of the factors listed in section 21(2) of the Act, as well as all other considerations that are relevant in the circumstances of the case.

The records that remain at issue consist of facsimile correspondence, computer printouts for case histories and inquiries and letters, withheld in whole or in part. The Ministry submits that some of the records contain financial information of an identifiable individual and therefore, the presumption in section 21(3)(f) applies.

The Ministry also submits that, given the nature and purpose of the records, the information held by the Director is highly sensitive. The Ministry points out that it is essential that the parties are able to communicate with the Director in confidence without the fear that the information could be disclosed to the other party. On this basis, the Ministry states that sections 21(2)(f) and (h) apply to all of the remaining information in the records.

I have reviewed the information in the records together with the representations of the Ministry. I make the following findings:

1. Certain portions of the information in the records at issue contain information pertaining to the enforcement of a support order or to the support of an individual. These records contain details and/or references to the financial history or activities of the individuals referred to in them. Accordingly, I find that these portions satisfy the presumption in section 21(3)(f) of the Act.
2. Sections 21(4) and 23 do not apply to the information that I have found to be exempt under the presumption and section 49(b) applies.
3. With respect to the remaining information, I find that, given the nature of the circumstances in which this information is collected, namely, as part of the enforcement of a support order through the Director's office, it is reasonable to expect that this information would be considered to be highly sensitive and would have been provided in confidence. Accordingly, I find that this information is exempt under sections 21(2)(f) and (h).
4. I find, therefore, that section 49(b) applies to pages 1, 2, 6, 7, 8, 9, 13, 25, 26, 27, 28, 30, 32, 33, 34, 35, 36, 37, 50, 52, 53, 56, 57, 59 and 60, in their entirety and to the withheld portions of pages 14, 24, 54 and 58.

Because of the manner in which I have disposed of the records above, I need not address the possible application of sections 13 and 15(b) to the records.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
Mumtaz Jiwan
Inquiry Officer

_____ May 31, 1996