



**Information and Privacy
Commissioner/Ontario**

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

FINAL ORDER PO-2090-F

Appeal PA-010289-1

Ministry of Finance



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>

This order represents my final order in respect of the outstanding issues from Interim Order PO-2059-I.

NATURE OF THE APPEAL:

The appellant submitted a request to the Ministry of Finance (the Ministry) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for access to all documents pertaining to his provincial tax file.

The Ministry issued a decision dated July 9, 2001, granting partial access to some of the records requested. Access to the remaining records was denied pursuant to sections 17(1) (third party information), 17(2) (tax information) and 21(1) (invasion of privacy) of the *Act*.

The appellant appealed the Ministry's decision to deny access and also raised the issue of the existence of additional records.

During mediation of this appeal, the Ministry withdrew its reliance on the mandatory exemption in section 17(1).

At inquiry, I sought and received representations from both parties. After reviewing them, I issued Interim Order PO-2059-I. In that order, I found that the records contained the appellant's personal information as well as the personal information of a number of other identifiable individuals. I also found that some of the records satisfied the requirements of section 21(3)(f) and that the factors favouring privacy protection in sections 21(2)(f) and (h) also applied to the records as did an unlisted consideration favouring disclosure. In balancing the appellant's right to disclosure against the interests of the other identifiable individuals in privacy protection, I determined that the privacy interests outweighed the appellant's interests in disclosure.

I concluded that disclosure of the personal information in Records 1, 2, 3, 4, 5, 6, 7 and 9 would constitute an unjustified invasion of privacy of individuals other than the appellant, but found that the Ministry had failed to exercise its discretion under section 49(b) of the *Act*. Section 49(b) provides the Ministry with discretion to balance two competing interests – the appellant's right of access to his personal information and the other identifiable individuals' rights to privacy. If the Ministry were to conclude that the balance weighs in favour of disclosure, the records could be released to the appellant, even if the Ministry has determined that this disclosure would represent an unjustified invasion of the other individuals' privacy.

I included a provision in Interim Order PO-2059-I requiring the Ministry to exercise discretion under section 49(b) with respect to the above-noted records and to provide me with representations as to the factors considered in doing so. I received representations from the Ministry in compliance with this provision.

DISCUSSION:

Exercise of Discretion

In explaining why it exercised its discretion in refusing to disclose certain information to the appellant, the Ministry indicates that it considered a number of factors under sections 21(2) and (3), including sections 21(2)(f) (highly sensitive) and (h) (supplied in confidence) and the presumptions in sections 21(3)(e) (information obtained for the purpose of collecting a tax) and (f) (financial information).

The Ministry indicates further that it considered the impact of disclosure on tax compliance investigations and the co-operation of third parties in such investigations, stating:

The Ministry feels that disclosing these Records would have a chilling effect on voluntary compliance and cooperation of individuals in Ministry investigations and such lack of cooperation could have a negative impact on the ability of the Ministry to collect tax revenues owing to the Province. Should disclosure occur, individuals providing information to the Ministry in a tax investigation may refuse to provide information voluntarily out of a concern of then having their personal information released to the person who is the subject of the investigation.

The Ministry states that it also considered whether refusing disclosure of the records would affect the appellant's ability to obtain a fair determination of his rights with respect to his tax liability and concluded that he "had other avenues available to [him] to obtain the information necessary to a fair determination of his rights under the established processes for such tax collection matters".

An institution's exercise of discretion must be made in full appreciation of the facts of the case, and upon proper application of the applicable principles of law. It is my responsibility to ensure that this exercise of discretion is in accordance with the *Act*. If I conclude that discretion has not been exercised properly, I can order the institution to reconsider the exercise of discretion [Order 58].

Having reviewed the reasons and rationale provided by the Ministry for exercising discretion under section 49(b) of the *Act*, I find nothing improper. I am satisfied that the Ministry has taken the particular circumstances of this case into account in exercising discretion in favour of protecting the privacy of individuals who have been identified/provided information to the Ministry in connection with its investigation into the appellant's tax liability.

ORDER:

I uphold the Ministry's decision to withhold the personal information in Records 1, 2, 3, 4, 5, 6, 7 and 9 pursuant to section 49(b) of the *Act*.

Original signed by: _____
Laurel Cropley
Adjudicator

December 19, 2002 _____