



**Information and Privacy
Commissioner/Ontario**

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

ORDER PO-2425

Appeal PA-050018-1

Ministry of Community and Social Services



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NATURE OF THE APPEAL:

The Family Responsibility Office (the FRO), a part of the Ministry of Community and Social Services (the Ministry), received two requests under the *Freedom of Information and Protection of Privacy Act* (the *Act*). The first request was for access to records from the requester's files relating to the following information:

- 1) Payments your office received from FOAEA [an acronym for the federal *Family Orders and Agreements Enforcement Assistance Act*], which were Federal Funds and were sent to FBA (Family Benefits Assistance)
- 2) Adjustment to certain arrears of support based on a specified Support Deduction Order
- 3) Copies and notations in Director's statement of arrears for the years 1993, 1994 and 1995
- 4) Confirmation of the transfer of the requester's file from the Toronto Family Support Office to that in Oshawa, along with any other documentation
- 5) Copies of a number of specified records relating to the support payor
- 6) Records relating to the payments of arrears from the Support Payor

The second request was for access to the following information:

- 7) Records relating to the actions to be undertaken by the Family Responsibility Office with respect to the allegations made by the requester
- 8) Specific endorsements on the record made by a Master of the Superior Court of Ontario on 3 specified orders
- 9) A question relating to the requester's divorce documents
- 10) A question about whether certain orders were properly issued
- 11) Other questions relating to specific problem areas identified by the requester in the processing of her file
- 12) A specific question relating to certain court matters from 1995.

The Ministry located records responsive to some aspects of the request. In its decision, the Ministry responded to both requests and numbered each section of its response in accordance with the numbering scheme used by the requester. While the Ministry granted partial access to the requested records which it was able to identify, access was denied to some of the responsive information pursuant to sections 21(1) (invasion of privacy), relying on the presumptions in sections 21(3)(d)(the personal information relates to employment history) and 21(3)(f) (the personal information describes an individual's finances) and section 49(b) (invasion of privacy) of the *Act*.

In addition, the Ministry noted that with respect to those items numbered 3, 4, 5 and 7, it could only provide copies of existing documents that are responsive to a request made under the *Act*. It indicated to the requester that any further questions regarding parts 3, 4, 5 and 7 of the request should be made in writing to the requester's "case owner" at the FRO. The Ministry also noted that with respect to parts 9, 10 and 11, the requester may wish to speak to the relevant courts for a response. In summary, the Ministry took the position that it was unable to locate records responsive to parts 3, 4, 5, 7, 9, 10 and 11 of the request.

The requester (now the appellant) appealed the Ministry's decision. Mediation was not successful and the file was moved to the adjudication stage of the appeals process. I sought and received the representations of the Ministry, initially. A complete copy of the Ministry's submissions was shared with the appellant, along with a Notice of Inquiry setting out the facts and issues in the appeal. I then received submissions from the appellant in response to the Notice, which consist of various correspondence relating to her on-going dispute with the FRO.

RECORDS:

The records at issue consist of the undisclosed portions of a support deduction order (Record 5(b)), along with various financial statements and supporting documentation filed with the Ontario Court (General Division) by the support payor (Records 6 to 31).

DISCUSSION:

REASONABLE SEARCH

Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 24 [Orders P-85, P-221, PO-1954-I]. If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records [Order P-624].

Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.

The Ministry's representations set out the steps which it took to address the appellant's request and indicates that it responded "literally to what the requester requested." It points out that:

. . . several portions of the request were clearly questions regarding the enforcement of the requester's file at the Family Responsibility Office and court procedures regarding the entering and issuing of orders [of the Court]. As a result, no documents were responsive to these portions of the request.

The Ministry goes on to point out that the responsive records maintained by the Family Responsibility Office relate to both the appellant as the recipient of support payments but also to the payor. As a result, access to some of the records or parts of records that may be responsive to her request was denied pursuant to the invasion of privacy exemptions in sections 21(1) and

49(b) of the *Act*. It goes on to state that “only the documents relating specifically to the request formed part of the Freedom of Information unit’s response.”

The Ministry then provided me with a detailed explanation of the locations where each of the searches were undertaken, in the form of an affidavit from the individual who conducted them, the student-at-law in the Family Responsibility Office. Searches for records responsive to Item 12 of the request were conducted by a different student-at-law. The searches for the first 11 items were conducted by “reading all papers contained within the physical file and those scanned into the computer system and then determining which, if any, were responsive to the request.”

The Ministry also provided me with the results of those searches, broken down for each of the 12 parts of the request. The appellant was provided with a complete copy of the Ministry’s representations outlining its response to each of the 12 parts of the request. The appellant did not dispute or challenge any of the information contained in the material provided to her during the exchange of representations process of this appeal.

In my view, the Ministry has provided me with adequate evidence to support a finding that the searches it conducted for responsive records were reasonable. In light of the fact that many parts of the requests took the form of questions, I find that the Ministry has attempted to provide the appellant with all of the information she is seeking and to assist her in understanding what is a complex and often confusing procedure. Based on the information provided to me by the Ministry, particularly the affidavits filed in support of its position, I find that the Ministry has met its obligations under the *Act* with respect to the adequacy of its searches and I dismiss that part of the appeal.

PERSONAL INFORMATION

The Ministry takes the position that the undisclosed portions of Record 5B and Records 6 to 31 inclusive contain the personal information of the support payor and the appellant. It argues that his information is exempt from disclosure under section 49(b) of the *Act*. In order to determine whether the invasion of privacy provision at section 49(b) applies, it is necessary to decide whether the record contains “personal information” and, if so, to whom it relates. That term is defined in section 2(1) as follows:

“personal information” means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history

of the individual or information relating to financial transactions in which the individual has been involved,

- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except if they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (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;

The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information [Order 11]. To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed [Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.)].

To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual [Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F, PO-2225]. Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual [Orders P-1409, R-980015, PO-2225].

I have reviewed the contents of Records 5(b) and 6 to 31 and find that they contain information relating directly to the support payor in this matter. The records include information relating to this individual's age and marital status (section 2(1)(a)), his employment history and certain financial transactions in which he was involved (section 2(1)(b)), his address (section 2(1)(d)), correspondence sent to the Ministry by this individual that is explicitly of a private or

confidential nature (section 2(1)(f)) and the support payor's name along with other personal information relating to him (section 2(1)(h)).

In addition, because the records relate to the support payor's obligations to the appellant, I find that the records also contain her personal information under the definition of that term in section 2(1)(h).

INVASION OF PRIVACY

Section 47(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 49 provides a number of exemptions from this right. Under section 49(b), where a record contains personal information of both the requester and another individual, and disclosure of the information would constitute an "unjustified invasion" of the other individual's personal privacy, the institution may refuse to disclose that information to the requester.

If the information falls within the scope of section 49(b), that does not end the matter. Despite this finding, the institution may exercise its discretion to disclose the information to the requester. This involves a weighing of the requester's right of access to his or her own personal information against the other individual's right to protection of their privacy.

Sections 21(1) to (4) provide guidance in determining whether the unjustified invasion of personal privacy threshold under section 49(b) is met. If any of paragraphs (a) to (h) of section 21(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 49(b). Once established, a presumed unjustified invasion of personal privacy under section 21(3) can only be overcome if section 21(4) or the "public interest override" at section 23 applies. [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767]. If no section 21(3) presumption applies, section 21(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy under section 49(b) [Order P-239]. The list of factors under section 21(2) is not exhaustive. The institution must also consider any circumstances that are relevant, even if they are not listed under section 21(2) [Order P-99].

The Ministry's representations

The Ministry argues that the presumptions in sections 21(3)(d) and (f) and the factors listed in sections 21(2)(f) and (h) apply in the circumstances of this appeal. These sections state:

(2) A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

(f) the personal information is highly sensitive;

(h) the personal information has been supplied by the individual to whom the information relates in confidence; and

(3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

(d) relates to employment or educational history;

(f) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;

The Ministry summarizes its position by stating that the records contain “the financial disclosure of the support payor and the personal information was supplied in confidence”. The appellant did not refer to the possible application of the exemption in section 49(b) in her representations.

Findings

I have reviewed the undisclosed portions of Record 5(b) and the contents of Records 6 to 31. These records represent the financial disclosure documents submitted by the support payor in the course of his various proceedings before the Ontario Court (General Division) in 1993 and 1994. The records include the support payor's Notice of Assessment and T4 for 1992 as well as a number of documents filed in support of his applications to the Court at that time. These records contain financial information that pertains to him including statements of his income and expenses at that time, as well as his proposed budgets.

In my view, this information falls within the ambit of the presumption in section 21(3)(f) as it describes in detail the support payor's finances, income, assets, liabilities and net worth at the pertinent time. Accordingly, I find that the disclosure of the undisclosed information in Record 5(b) and Records 6 to 31 would constitute a presumed unjustified invasion of the support payor's personal privacy and the information is exempt from disclosure under section 49(b). The appellant has not raised the possible application of the “public interest override” provision in section 23 and the exceptions in section 21(4) have no application in the circumstances. I conclude that the undisclosed information in Record 5(b), and Records 6 to 31 are, in their entirety, exempt under section 49(b).

The Ministry has provided me with extensive submissions regarding the manner in which it exercised its discretion not to disclose the records. I have reviewed these representations and find nothing improper in the considerations applied by the Ministry in deciding not to disclose this information to the appellant.

ORDER:

I uphold the Ministry's decision and dismiss the appeal.

Original signed by: _____

Donald Hale
Adjudicator

_____ October 31, 2005