

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER PO-3575

Appeal PA15-83

Ministry of Community and Social Services

February 2, 2016

**Summary:** The appellant made three related requests for access to records held by the ministry pertaining to her. The first two requests are the subject of Order PO-3569. This order deals with the third request. The ministry identified records responsive to this request and granted partial access to them, relying on sections 21(1) or 49(b) (personal privacy) of the *Act* to deny access to the portion it withheld. The appellant appealed this decision and asserted that additional records ought to exist. This order upholds the reasonableness of the ministry's search and the application of sections 21(1) or 49(b) to the portion of the responsive records that the ministry withheld.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, ss. 2(1) (definition of "personal information"), 21(1)(f), 21(2)(f), 21(2)(g), 21(3)(d), 21(3)(f), 24, 49(b).

**Order Considered:** P-1014, PO-2518.

### OVERVIEW:

[1] The Ministry of Community and Social Services (the ministry) received three related access requests from the appellant under the *Freedom of Information and Protection of Privacy Act* (the *Act* or *FIPPA*), in relation to records held by the ministry pertaining to her.

## Two Previous Appeals

[2] In request TRO-609-14, which was the subject of Appeal PA14-299<sup>1</sup>, the appellant sought access to:

... my complete ODSP [Ontario Disability Support Plan] file under the *Freedom of Information and Protection of Privacy Act (FIPPA)*, payment history with all ODSP payment records which were sent to my home address, and my Bank address, with my endorsing signature and bank stamp or ODSP payments from 1993 to 2014.

[3] The appellant ultimately narrowed request TRO-609-14 to be for:

A complete copy of the [requester's] Ontario Disability Support Program (ODSP) file, restricted to payment records for the period 1994 to present.

[4] The ministry located records that were responsive to request TRO-609-14 and granted access to them, in full.

[5] In request TRO-709-14, which was the subject of Appeal PA14-378, the appellant sought access to:

... my ODSP/FBA Program file under the Freedom of Information and Protection of Privacy Act (FIPPA).

...

I am in dispute with payment records under my old name and I am asking for payment history records from 1994 to 2010 when I turned 65 years old, which were sent to my Home or Bank address, with my endorsing signature or bank stamp for each payment, to determine Where, How and Why were those payments established and subsequently paid out from 1994 to 2010 under my identity?

[6] The ministry located records that were responsive to request TRO-709-14 and granted access to them, in full.

[7] The appellant appealed the ministry's decisions in relation to requests TRO-609-14 and TRO-709-14, asserting that additional records ought to exist. Accordingly, appeal files PA14-299 and PA14-378 were opened. In Order PO-3569, I upheld the reasonableness of the ministry's search for records that were responsive to requests TRO-609-14 and TRO-709-14.

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<sup>1</sup> Which, along with request TRO-709-14, is the subject of Order PO-3569.

## **The Current Appeal**

[8] In request TRO-1028-14, which is the subject of the within appeal, the appellant sought access to:

My complete copy of my ODSP file, relating to my three names: [specific name #1] and [specific name #2] aka [current requester's name], and FBA File under my former names from 1994 to 1997 and 1998.

[9] After granting a fee waiver request, the ministry issued its access decision letter pertaining to request TRO-1028-14 advising the appellant that:

Since all applicable FBA records were recently released to you as part of an earlier access request (our file numbers TRO-609-14 and TRO-709-14), we concentrated our search on ODSP records. Please note that upon our initial search we have been able to locate the attached file. Please be aware that there may be additional records for you, and we will continue to search until they have been located.

[10] The ministry granted partial access to the records it located that were responsive to request TRO-1028-14, relying on the mandatory exemption at section 21(1) or discretionary exemption at section 49(b) (personal privacy) of the *Act* to deny access to the portion it withheld. The appellant appealed this decision and asserted that additional records ought to exist. Accordingly, appeal file PA15-83 was opened.

[11] Mediation did not resolve appeal PA15-83 and it was moved to the adjudication stage of the appeals process where an adjudicator conducts an inquiry under the *Act*.

[12] I commenced my inquiry in appeal PA15-83 by sending the ministry a Notice of Inquiry setting out the facts and issues in the appeal. The ministry provided responding representations. I then sent a Notice of Inquiry to the appellant along with a copy of the ministry's representations. The appellant provided responding representations.

[13] In this order, I uphold the reasonableness of the ministry's search and the application of sections 21(1) or 49(b) to the portion of the responsive records that the ministry withheld.

## **ISSUES:**

- A. Did the ministry conduct a reasonable search for records responsive to request TRO-1028-14?
- B. Do the records which are responsive to request TRO-1028-14 contain "personal information" as defined in section 2(1)?

- C. Does the mandatory exemption at section 21(1) or the discretionary exemption at section 49(b) apply to the withheld information at issue in the records which are responsive to request TRO-1028-14?

## **RECORDS:**

[14] The records that the ministry identified as being responsive to request TRO-1028-14 which were withheld in part, or in full, include Court Applications, referrals, declarations, Statements of Arrears, data sheet, MECA<sup>2</sup> Inquiry Subsystem Case History Reports and correspondence, all as set out in the ministry's Index of Records.

## **SEARCH FOR RESPONSIVE RECORDS**

[15] 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.<sup>3</sup> 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.

[16] 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.<sup>4</sup> To be responsive, a record must be "reasonably related" to the request.<sup>5</sup>

[17] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request.<sup>6</sup>

[18] A further search will be ordered if the institution does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.<sup>7</sup>

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<sup>2</sup> Maintenance Enforcement Computerized Accounting.

<sup>3</sup> Orders P-85, P-221 and PO-1954-I.

<sup>4</sup> Orders P-624 and PO-2559.

<sup>5</sup> Order PO-2554.

<sup>6</sup> Orders M-909, PO-2469 and PO-2592.

<sup>7</sup> Order MO-2185.

[19] 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.<sup>8</sup>

[20] In its representations, the ministry submits that the appellant's three requests should not be looked at in isolation:

.... Collectively, the ministry has now disclosed to the appellant every record maintained by the ministry in connection with the administration of the appellant's social assistance file (that being provided by the FBA [*Family Benefits Act*<sup>9</sup>] and the ODSPA [*Ontario Disability Support Act*<sup>10</sup>]). In light of this ... the ministry submits that an additional search would not assist the appellant.

[21] The ministry further submits that the searches were conducted by an experienced employee knowledgeable in the subject matter of the requests who expended a reasonable effort to locate records reasonably related to the requests. The ministry then explains in detail the steps it took to locate records reasonably related to each of the three requests made by the appellant.

[22] The ministry submits:

Given the manner in which the ministry maintains social assistance files (files generated and maintained by the ministry in the administration of the ODSP and the predecessor FBA program), there are four locations that would contain responsive records: (1) the appellant's paper ODSP file; (2) the appellant's paper FBA file; (3) the SDMT<sup>11</sup>; and (4) the CIMS<sup>12</sup>. All information contained in these four locations have been compiled, reviewed for *FIPPA* exemptions and provided to the appellant.

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<sup>8</sup> Order MO-2246.

<sup>9</sup> *Family Benefits Act*, R.S.O. 1990, c. F.2, now revoked. The *Family Benefits Act* was discontinued when the *Ontario Disability Support Program Act*, 1997, S.O. 1997, c. 25, Sched. B came into effect.

<sup>10</sup> *Ontario Disability Support Program Act*, 1997, S.O. 1997, c. 25, Sched. B.

<sup>11</sup> The deponent of the affidavit provided by the ministry explains that the ministry's Service Delivery Model Technology (SDMT) is an electronic case management system previously used by ODSP staff to administer the program.

<sup>12</sup> The deponent of the affidavit provided by the ministry explains that the Comprehensive Income Maintenance System (CIMS), which is also no longer in use, was the predecessor system to SDMT.

The ministry submits that it has provided the appellant with all records collected and maintained by the ministry in respect of the appellant's social assistance from the period of 1994 to 2010 (when the appellant's file was closed). Although the appellant may feel that there is information that ought to be reflected in the records that have been provided to her, the ministry submits that it has done everything that it can to respond to the appellant's requests and ensure that she has every single record relating to the administration of her social assistance file, subject to the *FIPPA* exemptions that were applied.

The ministry submits that any defects in the individual searches (although the ministry maintains that each search is reasonable within the meaning of section 24 of the *Act*), has been remedied when viewed collectively. The ministry has made its best efforts to ensure that the appellant has, subject to the exemptions claimed by the ministry, every record respecting the administration of the appellant's social assistance in its custody.

[23] The ministry provided an affidavit of its Freedom of Information Lead for the Toronto Region in support of its position that it conducted a reasonable search for responsive records. As set out in the affidavit, the efforts were extensive and involved discussions with the appellant.

[24] He explains in general that:

Client level information collected by the ministry for the purposes of providing social assistance services is maintained in client files. The ministry maintains files for ODSP clients in paper and electronic format. The paper file and the electronic file, however, do not contain the same information. For example, the paper file contains any documents received by the ministry in the administration of social assistance including any correspondence sent to or from the ministry in relation to the administration of social assistance. The electronic file includes notes generated by ODSP caseworkers and detailed breakdowns of benefits issues [sic] to social assistance clients. These files are organized by the name of the recipient to which they relate. FBA files were also maintained both in paper and electronic format and were organized by the name of the recipient to which they relate.

[25] With respect to request TRO-609-14, the deponent of the affidavit states:

In order to respond to this request, [the then Freedom of Information Lead for the Toronto Region] reviewed the ministry's records which indicated that there was an ODSP file for a [appellant's name] with the same Member ID and SIN provided by the appellant. A review indicates

that her ODSP file was opened on October 1, 2008 and closed on December 1, 2010.

In order to respond to the request, [the then Freedom of Information Lead for the Toronto Region] reviewed the electronic file available on the ministry's Service Delivery Model Technology (SDMT). SDMT is an electronic case management system that was used by ODSP staff to administer the program. A new system has since been implemented in November 2014. However, SDMT would contain any responsive records, given that [the appellant's] file was opened in 2008 and closed in 2010. SDMT captures information from September, 2001 through to the end of October, 2014.

[The then Freedom of Information Lead for the Toronto Region] reviewed SDMT for responsive records and proceeded to print off all payment lists available on SDMT in respect of [the appellant's] file. Payments would have been generated automatically by SDMT. The payment lists identified as responsive would contain a list of all social assistance payments made to the appellant, or other individuals on her behalf (where applicable), a breakdown of those payments, a description of how the payment was delivered to the client or other individual and the address on file for the client at the time of the payments.

As payments are generated automatically by SDMT, the SDMT payment screens represent a comprehensive list of all social assistance payments made in respect of a particular file. Therefore, the payment lists available through SDMT would capture every payment made by ODSP in respect of [the appellant's] file. No FBA records were located under the name of [the appellant].

These payment lists were provided to the appellant ....

[26] With respect to request TRO-709-14, the deponent of the affidavit states:

The ministry interpreted this request as a request for payment records under the names [specific name #1] or [specific name #2] from 1994 to 2010.

As the ministry had previously provided the appellant with all payment records related to her ODSP file, the ministry focused its search on any FBA records that may be responsive to the request.

In order to respond to this request, I searched the Comprehensive Income Maintenance System (CIMS) using all three names provided by the appellant. CIMS is a predecessor system to SDMT, and was in use prior to the discontinuation of the FBA program. Though CIMS is no longer

operational, it is possible to retrieve monthly summary pages for clients who were on FBA. This functionality is accessed through a portal within SDMT. In order to search for records, the user needs to have the clients FBA ID, which is composed of the first five letters of a client's last name, six digits of the date of birth and a zero. Each summary page gives a snapshot of one specific month, showing the client's monthly entitlement, address, overpayments, and any spouse or dependents active on the benefit unit. Using SDMT, the ministry located CIMS records pertaining to the name [specific name #1]. The records related to the period from 1994 to 1997 and constituted all CIMS records relating to the appellant. No other records were located by the CIMS search using all three names provided by the appellant.

On [specified date], the ministry provided the responsive records to the appellant. These consisted of the records that were pulled from CIMS, given that the appellant had previously been provided with all payment screens from her ODSP file that were available on SDMT....

[27] With respect to request TRO-1028-14, which is the subject of the within appeal, the deponent of the affidavit states:

... after discussions with staff at the Information and Privacy Commissioner, I proposed to the appellant that she make a request for copies of her complete ODSP file from 2008-2010. This is because all CIMS records had been provided in response to TRO-709-14. As well, up until [specified date]..., I had been operating under the assumption that the paper FBA file had been destroyed in accordance with relevant records retention schedules, ...

On [specified date], the ministry received a request for the appellant's complete ODSP/FBA file (FBA file from 1994-1997 and 1998) under the names of [specific name #1], [specific name #2] or [appellant's name].

Once the access request was received from the appellant, I requested the paper ODSP file from the ministry's offsite storage facility. As the file had been inactive since 2010, it had been moved off-site.

On [specified date], I received a portion of the appellant's paper ODSP file; the rest of the file arrived approximately a week later. At that point, I discovered that the appellant's paper ODSP file also contained her paper FBA file that had been terminated in 1997.

In addition to the paper files that were retrieved, in order to respond to this request, copies of all SDMT notes (not simply financial as previously provided) were also produced. CIMS was not searched again as the



entirety of the available CIMS notes had previously been provided to the appellant.

The ministry reviewed the appellant's ODSP and FBA file, including SDMT printouts, applied certain exemptions and provided the appellant with a copy. As the paper file arrived in two parts from the offsite storage facility, the records were provided to the appellant on two separate occasions, The responsive records were provided to the appellant on [specified dates] ....

[28] The deponent concludes his affidavit by stating:

The appellant has now been provided with a complete copy of her ODSP file (both paper records and electronic (SDMT records), her paper FBA file and copies of all CIMS notes in the ministry's custody under the names of [specific name #1] and [appellant's name]. Searches for records under the name of [specific name #2] did not produce any results. As a result, to the best of my knowledge, the appellant has been provided with copies of every record maintained by the ministry in respect of the administration of her social assistance file, either under the FBA or the ODSPA.

[29] In response, the appellant provided wide-ranging representations (with attachments) detailing her physical condition, her interactions with legal aid, her experience relating to the administration of her social assistance file, her dealings with individuals to whom she says she gave power of attorney, her family law proceedings and her dealings with FRO<sup>13</sup>. Her representations conclude with a series of questions about these various matters organized under sub-headings. She requests that a new search be conducted for all documentation in her name.

[30] While the appellant takes issue with a number of matters in which she was involved, I find that she does not provide sufficient evidence to challenge the reasonableness of the ministry's search for records that are responsive to the request at issue.

[31] As set out above, the *Act* does not require the institution to prove with absolute certainty that further responsive 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. Based on the evidence before me, I am satisfied that a search was conducted by an experienced employee of the ministry knowledgeable in the subject matter of the request, who expended a reasonable effort to locate records, which are reasonably related to the request at issue.

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<sup>13</sup> The FRO collects, distributes and enforces child and spousal support payments in accordance with the *Family Responsibility and Support Arrears Enforcement Act, 1996*, S.O. 1996, c.31.

[32] I am satisfied that, in all the circumstances, the ministry conducted a reasonable search for records responsive to the request resulting in the within appeal.

**B. Do the records contain “personal information” as defined in section 2(1)?**

[33] In order to determine which sections of the *Act* may apply, 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 where 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.

[34] 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.<sup>14</sup>

[35] Sections 2(3) and (4) also relate to the definition of personal information. These sections state:

(3) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.

(4) For greater certainty, subsection (3) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

[36] 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.<sup>15</sup>

[37] 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.<sup>16</sup>

[38] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.<sup>17</sup>

[39] In the circumstances of this appeal, because of the manner in which request TRO-1028-14 is framed, and the fact that the information is found in files that pertain to the appellant, I find that, with some limited exceptions, all the records contain, directly or indirectly, the personal information of the appellant, as that term is defined in section 2(1) of the *Act*. The exceptions are the records described in the index of records as volume 1 (page 1) and volume 2 (pages 71, 72, 85 and 86). Those records contain the personal information of individuals other than the appellant, and do not contain the appellant’s personal information.

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<sup>14</sup> Order 11.

<sup>15</sup> Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

<sup>16</sup> Orders P-1409, R-980015, PO-2225 and MO-2344.

<sup>17</sup> Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

[40] I further find that all of the records which contain the personal information of the appellant also contain the personal information of an identifiable individual or identifiable individuals other than the appellant.

**C. Does the mandatory exemption at section 21(1) or the discretionary exemption at section 49(b) apply to the withheld information at issue?**

***General principles***

[41] 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.

[42] Under section 49(b), where a record contains personal information of both the requester and another individual, and disclosure of the information would be an “unjustified invasion” of the other individual’s personal privacy, the institution may refuse to disclose that information to the requester. Since the section 49(b) exemption is discretionary, the institution may also decide to disclose the information to the requester.

[43] In contrast, under section 21(1), where a record contains personal information of another individual but *not* the requester, the institution is prohibited from disclosing that information unless one of the exceptions in sections 21(1)(a) to (e) applies, or unless disclosure would not be an unjustified invasion of personal privacy [section 21(1)(f)].

[44] In applying either of the section 49(b) or 21(1) exemptions, sections 21(2) and (3) help in determining whether disclosure would or would not be an unjustified invasion of privacy. Also, section 21(4) lists situations that would not be an unjustified invasion of personal privacy.

[45] 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.

[46] For records claimed to be exempt under section 21(1) (ie., records that do not contain the requester’s personal information), a presumed unjustified invasion of personal privacy under section 21(3) can only be overcome if a section 21(4) exception or the “public interest override” at section 23 applies.<sup>18</sup>

[47] If the records are not covered by a presumption in section 21(3), section 21(2) lists various factors that may be relevant in determining whether disclosure of the personal information would be an unjustified invasion of personal privacy and the

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<sup>18</sup> *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767.

information will be exempt unless the circumstances favour disclosure.<sup>19</sup>

[48] For records claimed to be exempt under section 49(b) (ie., records that contain the requester's personal information), this office will consider, and weigh, the factors and presumptions in sections 21(2) and (3) and balance the interests of the parties in determining whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy.<sup>20</sup>

[49] In this appeal, I find that none of the situations listed in section 21(4) apply to the records at issue. The appellant did not claim the application of the "public interest override" at section 23, nor in my view would it apply.

[50] As set out above, the appellant provided wide-ranging representations (with attachments) detailing her physical condition, her interactions with legal aid, her experience relating to the administration of her social assistance file, her dealings with individuals to whom she says she gave power of attorney, her family law proceedings and her dealings with Family Responsibility Office (FRO). Her representations conclude with a series of questions about these various matters organized under sub-headings. The appellant does not refer to the application of section 21(2)(a), however her representations discuss her concerns about the ministry's conduct in administering her claims. I interpreted this as a submission that disclosure of the information would be desirable for the purpose of subjecting the activities of the ministry to public scrutiny, a factor listed in section 21(2)(a).

[51] The ministry provides specific representations on the information in the records at issue, which the ministry withheld in part or in full. The ministry's representations refer to sections 21(2)(f), 21(2)(g), 21(3)(d) and 21(3)(f) as the factors or presumptions it relied upon to withhold information from the appellant.

[52] The sections referred to above read:

(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,

(a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny;

(f) the personal information is highly sensitive;

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<sup>19</sup> Order P-239.

<sup>20</sup> Order MO-2954.

(g) the personal information is unlikely to be accurate or reliable.

(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.

*Volume 1, page 1*

[53] The ministry states that this record is a court document relating to two individuals other than the appellant. The ministry submits that the information in the record "is not of a business or professional nature, rather quite the opposite as it relates to what appears to be a family proceeding". The ministry submits that the information in the record relates "to the family status of the named individuals" and that "this is information of a sensitive nature". Accordingly, the ministry submits that the factor at section 21(2)(f) applies to the information in the record.

*Volume 2, pages 1-2*

[54] The ministry states that this record is an affidavit of service in respect of a proceeding relating to a named individual who is not the appellant. The ministry submits that the factor at section 21(2)(f) applies to the information in the record:

... as the record identifies the named individual as being subject to a proceeding, presumably an enforcement proceeding brought by the Director of the Family Support Plan (the predecessor to the Family Responsibility Office), implying non-compliance with a court order, which the ministry submits is a sensitive matter.

*Volume 2, pages 3 to 60, 65 to 70, 73 to 75, 78 to 84, 87 and 88*

[55] The ministry submits that these records consist of print outs from the Maintenance Enforcement Computerized Accounting (MECA) system maintained by FRO. The ministry submits that:

The records relate to the account of a named individual and contain what the ministry considers to be that individual's financial information, namely amounts owing by that individual pursuant to a support order registered with the FRO.

[56] The ministry submits that the records relate to a liability of the individual and

contain "detailed accruals". The ministry submits that section 21(3)(f) of the *Act* applies to the information contained in these records.

*Volume 2, pages 61 to 63, 89 and 90*

[57] The ministry submits that these records consist of statements of arrears of a named individual and set out an accounting of arrears owed. The ministry submits that for the same reasons set out above, section 21(3)(f) of the *Act* applies to the information contained in these records.

*Volume 2, pages 71, 72, 85 and 86*

[58] The ministry states that these records consist of letters between a named individual and a law firm pertaining to an unidentified dispute. The ministry submits that the records contain financial information and qualify for exemption under section 21(3)(f) of the *Act*. In the alternative, the ministry submits that a weighing of the factors under section 21(2) would lead to the same result, because none of the factors weighing in favour of disclosure in section 21(2) apply:

... Rather, the ministry submits that section 21(2)(f) is applicable on the review of the document and its content, given that it appears to speak to a dispute involving a named individual who does not appear to be acting in a professional capacity. This is supported by the tone of the letters and the subject matter discussed. Even if [the IPC] does not find that the information is "highly sensitive", the ministry submits that some measure of sensitivity attaches to the records that weigh in favour of a finding that the disclosure of the records would constitute an unjustified invasion of personal privacy. ...

*Partially severed records, volume 2, pages 1 to 20, 22 to 25, 29 to 35 and 38*

[59] The ministry states that it withheld the appellant's former spouse's address and employment information from the version of the above records that it disclosed to the appellant. The ministry submits that these records are various court documents and disclosure of the withheld information would constitute an unjustified invasion of his personal privacy.

[60] The ministry submits that the named individual's employment information falls within the scope of section 21(3)(d) of the *Act* as it identifies the employment history of this individual. It further submits that the address information is unlikely to be accurate or reliable "as, given the passage of time the address information may no longer be accurate" and thereby falls within the scope of section 21(2)(g) of the *Act*.

*Partially severed records, volume 2, pages 21, 26 to 28, 36 and 37*

[61] The ministry states that it withheld the appellant's former spouse's address and employment information from the version of the above records that it disclosed to the appellant. The ministry submits that these records consist of various ministry forms related to the provision of social assistance and disclosure of the withheld information would constitute an unjustified invasion of his personal privacy.

[62] In that regard, the ministry makes similar submissions to those set out above and submits that withheld information also falls within the scope of sections 21(2)(g) and 21(3)(d) of the *Act*.

### ***Analysis and findings***

#### *The section 21(3)(d) and 21(3)(f) presumptions*

##### Section 21(3)(d): employment or educational history

[63] Previous orders have confirmed that information which reveals the dates on which former employees are eligible for early retirement, the start and end dates of employment, the number of years of service, the last day worked, the dates upon which the period of notice commenced and terminated, the date of earliest retirement, entitlement to and the number of sick leave and annual leave days used and restrictive covenants in which individuals agree not to engage in certain work for a specified duration has been found to fall within the section 21(3)(d) presumption.<sup>21</sup> Information contained in resumes<sup>22</sup> and work histories<sup>23</sup> also falls within the scope of section 21(3)(d).

[64] However, past orders of this office have held that a person's name, occupation, location and employer do not, without more detail, attract the application of the presumption in section 21(3)(d).<sup>24</sup> In this appeal, where the ministry has claimed section 21(3)(d) in relation to this same information about an identifiable individual other than the appellant, I find that it does not constitute a sufficiently detailed description of their "employment history" to fit within the presumption in section 21(3)(d).

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<sup>21</sup> Orders M-173, MO-1332, P-1348 and PO-2050.

<sup>22</sup> Orders M-7, M-319 and M-1084.

<sup>23</sup> Orders M-1084 and MO-1257.

<sup>24</sup> Orders PO-2298 and PO-2877.



Section 21(3)(f): finances

[65] For section 21(3)(f) to apply, the personal information must describe “an individual’s finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness.” Based on my review of the records, I accept the ministry’s submission that the presumption against disclosure in section 21(3)(f) applies to some of the withheld personal information in the records at issue. I find that the nature of this information satisfies the requirements of section 21(3)(f) and that its disclosure is presumed to constitute an unjustified invasion of an identifiable individual’s personal privacy.

[66] I will now consider whether the factors at sections 21(2)(a), 21(2)(f) or 21(2)(g) apply to the withheld personal information remaining at issue.

The factors at sections 21(2)(a), 21(2)(f) and 21(2)(g)

Section 21(2)(a): Public Scrutiny

[67] The appellant does not refer to the application of section 21(2)(a), however her representations discuss her concerns about the ministry’s conduct in administering her claims. I interpreted this as a submission that disclosure of the information would be desirable for the purpose of subjecting the activities of the ministry to public scrutiny, a factor listed in section 21(2)(a).

[68] In my view, section 21(2)(a) does not apply. I find that the interests at play in this appeal are essentially private and that releasing the balance of the withheld personal information will not assist in ensuring public confidence in the integrity of the ministry. In all the circumstances of this case, I am not satisfied, on the evidence before me that this factor applies.

Sections 21(2)(f): highly sensitive and 21(2)(g): unlikely to be accurate or reliable

[69] I am satisfied that the disclosure of the withheld personal information remaining at issue could reasonably be expected to result in significant personal distress to an identifiable individual other than the appellant. In Order PO-2518, former Senior Adjudicator John Higgins considered the issue of what evidence is required to bring personal information within the ambit of section 21(2)(f). Noting that past orders had found that for personal information to be considered highly sensitive, it must be found that disclosure of the information could reasonably be expected to cause “excessive” personal distress to the subject individual, he found instead that “a reasonable expectation of ‘significant’ personal distress is a more appropriate threshold in assessing whether information qualifies as ‘highly sensitive’.”<sup>25</sup> In this appeal, because of the

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<sup>25</sup> See also Orders PO-2617, MO-2262 and MO-2344.

nature of the records and information at issue as well as the circumstances that gave rise to their creation, I find that disclosure of the withheld personal information of an identifiable individual remaining at issue would result in a reasonable expectation of significant personal distress and, therefore, this factor weighs in favour of the protection of privacy, and I find that it should be accorded moderate weight.

[70] In my view, the factor favouring non-disclosure at section 21(2)(g) does not apply in the circumstances of this appeal to the address information simply because it is older.

### ***Conclusion***

[71] With respect to the records described in the ministry's index as volume 1 (page 1) and volume 2 (pages 71, 72, 85 and 86), I find that section 21(2)(f) applies to these records. Accordingly, disclosing the information would constitute an unjustified invasion of the personal privacy of identifiable individuals. As a result, those records qualify for exemption under section 21(1) of the *Act*.

[72] With respect to the other records, which were withheld in part, or in full, having found that the remaining personal information relating to an identifiable individual is subject to the presumption at section 21(3)(f) and/or the factor in 21(2)(f) and that no factors favouring disclosure apply, and balancing the competing interests of the appellant's right to disclosure of information against the privacy rights of the other identifiable individual whose personal information is at issue, I find that the disclosure of this information would constitute an unjustified invasion of the identifiable individual's personal privacy. Accordingly, I find that this information qualifies for exemption under section 49(b) of the *Act*.

### ***Final Matters***

[73] The absurd result principle applies in situations where the individual seeking disclosure of another individual's personal information is already aware of the information such that it would be absurd and inconsistent with the purpose of the exemption to withhold it. If the absurd result principle applies, the personal information at issue may be found not exempt under section 49(b). I accept that some of the information contained in the withheld records may very well have been within the appellant's knowledge in the past. However, I am satisfied that in the circumstances of this appeal, withholding the information would not be absurd or inconsistent with the purpose of the exemption. For this reason, I find that the absurd result principle does not apply.

[74] Furthermore, I find that with respect to the records, or portions thereof, that are subject to the section 49(b) exemption, the ministry considered the particular and specific circumstances of this case and made decisions regarding disclosure based on a defensible balancing of the rights of the appellant to access her personal information

and another identifiable individual's right to privacy. In addition, many records have already been disclosed to the appellant, and I am satisfied that efforts were made by the ministry to maximize the amount of disclosure, while at the same time considering the nature and type of personal information contained in the withheld portions of these records. Consequently, I uphold the ministry's exercise of discretion.

[75] Having found that the records contain personal information and that they are exempt from disclosure under sections 21(1) and 49(b) of the *Act*, I uphold the ministry's decision and dismiss the appeal.

**ORDER:**

1. I uphold the reasonableness of the ministry's search for responsive records.
2. I uphold the ministry's decision and dismiss the appeal.

Original Signed by: \_\_\_\_\_  
Steven Faughnan  
Adjudicator

February 2, 2016 \_\_\_\_\_