



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

ORDER P-589

Appeal P-9300190

Ministry of the Attorney General



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ORDER

BACKGROUND:

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 "all records, notes, letters or other material related to garnishment proceedings in or about 1990 against [the requester]" held by the Family Support Plan Branch (the FSPB) of the Ministry. The Ministry identified 222 pages of material responsive to the request and provided partial access to these records. The Ministry denied access in full or in part to 35 pages pursuant to sections 14(1)(a) and (c), 21 and 49(a) of the Act. The requester appealed the Ministry's decision, but indicated that he did not wish to appeal any denial of access to his ex-wife's address, phone number or other personal information related solely to her.

During mediation, the Ministry disclosed additional records to the appellant. As no further mediation was possible, notice that an inquiry was being conducted to review the Ministry's decision was sent to the appellant and the Ministry. Representations were received from both the appellant and the Ministry.

In his representations, the appellant indicated that he was not seeking access to any information which related solely to other individuals. As a result, the information for which the Ministry claimed section 21 is no longer at issue.

RECORDS:

Nine pages remain at issue in whole or in part, as follows:

Page 113 - Payor Information Update - the severed portions of the page;

Page 122 - handwritten notes - the severed information following the March 5 entry;

Page 183 - Central Inquiry Memo dated March 25, 1991 - the severed information below the double line;

Page 184 - Central Inquiry Memo dated March 5, 1991 - the severed information below the double line;

Page 191 - handwritten notes - the severed portion;

Page 205 - letter dated July 10, 1990;

Page 217 - Filing Information Form page 3 - the severed portions;

Page 219 - Filing Information Form page 4 - the severed portions;

Page 221 - Filing Information Form page 5 - the severed portions.

ISSUES:

- A. Whether any of the information contained in the records qualifies as "personal information" that relates to the appellant, as defined in section 2(1) of the Act.
- B. Whether the records qualify for exemption under sections 14(1)(a) and/or 14(1)(c) of the Act.
- C. If the answer to Issues A and B is yes, whether the discretionary exemption provided by section 49(a) of the Act applies.
- D. If the answer to Issue A is yes and the records contain personal information that also relates to individuals other than the appellant, whether the discretionary exemption provided by section 49(b) of the Act applies.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether any of the information contained in the record qualifies as "personal information" that relates to the appellant, as defined in section 2(1) of the Act.

Section 2(1) of the Act states, in part:

"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,
...
- (d) the address, telephone number, fingerprints or blood type of the individual,
...

- (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;

I have reviewed each of the records at issue. I am satisfied that all of the records contain information which falls under one or more of the above-mentioned paragraphs of the definition of personal information. I find that this personal information relates to the appellant. In addition, I find that pages 184 and 205 contain personal information that relates to the appellant and another individual.

ISSUE B: Whether the records qualify for exemption under sections 14(1)(a) and/or 14(1)(c) of the Act.

The Ministry submits that the records at issue are exempt under section 14(1)(a) of the Act. This section reads:

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

interfere with a law enforcement matter;

Law enforcement is defined in section 2(1) of the Act 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);

The purpose of section 14(1)(a) is to provide the Ministry with the discretion to preclude access to records in circumstances where disclosure of the records could reasonably be expected to interfere with an ongoing law enforcement matter. The Ministry bears the onus of providing

sufficient evidence to substantiate that the law enforcement matter is ongoing and the reasonableness of the expected harm(s).

The Ministry states that the records at issue contain information gathered by the FSPB under the Family Support Plan Act (the FSPA) R.S.O. 1990, c.S.28, in the process of enforcing a support deduction order issued against the appellant. The Ministry submits that this is an ongoing law enforcement matter and the disclosure of the records would reasonably be expected to interfere with it.

The Ministry states in its representations that the FSPB has broad investigatory and enforcement powers in relation to the administration of the FSPA and the enforcement of support and custody orders filed with the Director of the FSPB. The Director or any person designated by the Director as an enforcement officer, has the power to commence and conduct a proceeding and to take steps for the enforcement of an order. The enforcement of a support deduction order does not end until the support order to which it relates is terminated and there are no arrears owing, and enforcement continues despite the fact that the support order has not been filed in or has been withdrawn from the Director's office.

The FSPA also provides that when a payor under a support order is in default, the Director may require the payor to file a financial statement and to appear before the court to explain the default. If the payor fails to appear before the court, the court may issue a warrant for the payor's arrest for the purpose of bringing him or her before the court. The court may also order the arrest of an absconding payor.

The FSPA also provides that in addition to its powers in respect of contempt, the court may punish by fine or imprisonment, or by both, any wilful contempt of, or resistance to, its process, rules or orders under the FSPA.

Therefore, having considered the provisions of the FSPA and the representations of the Ministry, it is my view that the matter to which the records at issue relate is a law enforcement matter, as the term is defined in section 2(1) of the Act. I find that this law enforcement matter is ongoing.

In my view, the exception to access set out in section 14(1)(a) of the Act requires that there exist a reasonable expectation of probable harm. The mere possibility of harm is not sufficient. At a minimum, the Ministry must establish a clear and direct linkage between the disclosure of the specific information and the harm which is alleged and in my view, the Ministry discharges this onus by establishing a clear and direct linkage between the disclosure of the specific information and the harm alleged (Orders P-557 and M-202).

The Ministry's representations regarding the application of section 14(1)(a) provide details as to how disclosure of the contents of the records could have the effect of hampering or impeding the Ministry's effectiveness in carrying out its duties under the FSPA with respect to the law enforcement matter referred to earlier in this order. The Ministry has advised that while the appellant may not currently be in arrears, it continues to have the case before it and must retain the ability to take enforcement actions, including seeking of penalties and sanctions outlined in the FSPA, should the appellant be in violation of the support order at any time in the future.

Having carefully considered the contents of the records and the representations of the parties, in my view, the Ministry has provided sufficient evidence to establish that the disclosure of the records could reasonably be expected to interfere with a law enforcement matter under section 14(1)(a) of the Act. Accordingly, I find that all of the records qualify for exemption under this section.

As I have found that section 14(1)(a) applies to each of the records at issue, it is not necessary for me to deal with section 14(1)(c) of the Act.

ISSUE C: If the answer to Issues A and B is yes, whether the discretionary exemption provided by section 49(a) of the Act applies.

Under Issue A, I found that all of the records at issue in this appeal contain the personal information of the appellant. Section 47(1) gives individuals a general right of access to personal information in the custody or control of individuals. However, this right of access is not absolute. Section 49(a) provides an exception to this general right of disclosure of personal information to the person to whom the information relates. Specifically, section 49(a) provides that:

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)

Under Issue B, I found that each of the records qualifies for exemption under section 14(1)(a) of the Act.

Section 49(a) is a discretionary exemption. The Ministry has provided representations regarding the exercise of discretion to refuse to disclose these records to the appellant and I find nothing to indicate that the exercise of discretion was improper.

Because of the manner in which I have disposed of Issues A, B and C, it is not necessary for me to deal with Issues D and E.

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
Asfaw Siefe
Inquiry Officer

November 29, 1993