



Information and Privacy
Commissioner/Ontario

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

ORDER P-823

Appeal P-9400368

Ministry of the Attorney General



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NATURE OF THE APPEAL:

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). The appellant requested copies of all records in the Family Support Plan office (the FSP) of the Ministry of the Attorney General (the Ministry), relating to a payment dispute between the appellant and her ex-husband (the affected person). The FSP is an administrative system of enforcement of spousal and child support orders issued by the courts upon the breakdown of a marriage.

The Ministry located responsive records and granted partial access to them. Access was denied in total or in part, to 17 pages pursuant to the following sections:

- solicitor-client privilege - section 19
- invasion of privacy - section 21

The appellant appealed the denial of access. A Notice of Inquiry was provided to the appellant, the affected person and the Ministry. As it appeared that some information might pertain to the appellant, the parties were asked to address the possible application of sections 49(a) and (b) to the records at issue. Representations were received from the Ministry only.

The records consist of computer printouts generated by the FSP relating to file history (Pages 11-13, 109 and 110), correspondence between the affected person and the FSP (Pages 27, 30-31, 40, 42, 43-44, 45-46 and 47), a request for a legal opinion and a legal memorandum (Pages 49 and 50).

DISCUSSION:

PERSONAL INFORMATION

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including any identifying number assigned to the 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.

Having carefully reviewed the pages at issue in this appeal, I find that they all contain personal information about both the appellant and the affected person.

The Ministry claims that section 19 applies to Pages 49 and 50, and that section 21 applies to the remaining pages or parts of pages.

INVASION OF PRIVACY

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(b) of the Act, where a record contains the personal information of both the appellant and other individuals and the Ministry determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the Ministry 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 the disclosure of personal information would constitute an unjustified invasion of personal privacy. 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 Ministry submits that the following provisions weigh in favour of privacy protection:

- the information is highly sensitive - section 21(2)(f)
- the information was supplied in confidence - section 21(2)(h).

In her correspondence with the Ministry and this office, the appellant has indicated that she is seeking information to assist her in enforcing the payments that are owing to her, in court if necessary. This raises the possible application of section 21(2)(d) (fair determination of rights).

As I noted above, however, the appellant did not submit representations in this appeal. In my view, the appellant's reasons for seeking access to the records at issue do not provide sufficient information for me to conclude that section 21(2)(d), or any other factors which favour disclosure of the personal information apply in the circumstances of this appeal.

Having reviewed the representations and the pages at issue, I have made the following findings:

- (1) With the exception of the withheld portions of Pages 12, 13 and 110, the personal information of the affected person may be considered to be highly sensitive and/or was supplied to the Ministry in confidence. Thus, sections 21(2)(f) and (h) are relevant.
- (2) The portions of Pages 12, 13 and 110 which have been withheld are simply part of a log which indicates the date upon which correspondence from the affected person has been received by the FSP. In the circumstances of this appeal, this information is neither highly sensitive nor of a confidential nature. Having reviewed the other provisions in section 21, I am of the view that none of them apply to the withheld portions of these three pages. As disclosure of the personal information contained in the portions of Pages 12, 13 and 110 would not constitute an unjustified invasion of the affected person's personal privacy, they should be provided to the appellant.

- (3) As I have found that sections 21(2)(f) and (h) apply to the remaining personal information, the exemption in section 49(b) applies to the portions of Pages 11 and 109 at issue and Pages 27, 30-31, 40, 42, 43-44, 45-46 and 47 in their entirety.

SOLICITOR-CLIENT PRIVILEGE

As I indicated above, the Ministry claims that section 19 of the Act applies to exempt Pages 49 and 50 from disclosure. Section 19 consists of two branches, which provide an institution with the discretion to refuse to disclose:

1. a record that is subject to the common law solicitor-client privilege (Branch 1);
and
2. a record which was prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in litigation (Branch 2).

The Ministry claims that the common law privilege (Branch 1) applies to exempt both pages from disclosure. Page 49 is a one-page form document entitled "Request for Legal Opinion". Page 50 is a one-page form document entitled "Legal Memorandum".

I have carefully reviewed the Ministry's representations, and the pages at issue. I find that both pages contain written communications of a confidential nature between a client and his or her solicitor, and are directly related to the seeking, formulating or giving of legal advice. Accordingly, both Pages 49 and 50 qualify for exemption under Branch 1 of section 19.

I found above that Pages 49 and 50 contain the personal information of the appellant. 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, including section 19, would otherwise apply to that information.

Accordingly, I find that Pages 49 and 50 are exempt under section 49(a).

ORDER:

1. I order the Ministry to disclose Pages 12, 13 and 110 in their entirety to the appellant within thirty-five (35) days after the date of this order but not before the thirtieth (30th) day after the date of this order. For greater certainty, I have provided a copy of these pages to the Ministry's Freedom of Information and Privacy Co-ordinator with a copy of this order.
2. I uphold the Ministry's decision to deny access to the remaining pages and parts of pages.

3. In order to verify compliance with this order, I reserve the right to require the Ministry to provide me with a copy of the pages which are disclosed to the appellant pursuant to Provision 1.

Original signed by: _____
Laurel Cropley
Inquiry Officer

_____ December 22, 1994