



Information and Privacy  
Commissioner/Ontario

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

# ORDER P-792

Appeal P-9400386

Ministry of the Attorney General



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## **NATURE OF THE APPEAL:**

The Ministry of the Attorney General (the Ministry) received a request for copies of all documentation relating to the garnishment of the requester's wages by the Support and Custody Enforcement Program, now the Family Support Plan (the F.S.P.) The F.S.P. is an administrative system of enforcement of spousal and child support orders issued by the courts upon the breakdown of a marriage.

The requester specifically sought access to copies of all memoranda written to the F.S.P. by two named individuals, all records of telephone conversations between these two individuals and the F.S.P. and any information relating to whether the recipient of the monies obtained from the garnished wages questioned the F.S.P. about the payment.

The Ministry provided the requester with copies of 143 pages of documents, either in whole or in part. The requester appealed the Ministry's decision to withhold the remaining information.

Notice that an inquiry was being conducted to review the decision of the Ministry was sent to the Ministry and the appellant. Representations were received from both parties. In its representations, the Ministry disclosed additional records to the appellant and withdrew its reliance on two discretionary exemptions which it had originally claimed. The following are the remaining exemptions now at issue in this appeal:

- solicitor-client privilege - section 19
- invasion of privacy - sections 21 and 49(b)
- discretion to refuse requester's own information - section 49(a)

The records to which these exemptions have been applied are described in Appendix "A".

## **DISCUSSION:**

### **INVASION OF PRIVACY**

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, with the exception of Pages 43 and 44, they all contain personal information about the appellant and other identifiable individuals. Pages 43 and 44 contain the personal information of the appellant only.

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 of the Act provides a number of exceptions to this general right of access.

Under section 49(b), where a record contains the personal information of both the appellant and other

individuals and the institution determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the institution 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 institution must consider the application of the factors listed in section 21(2), as well as all other considerations that are relevant in the circumstances of the case.

In its representations, the Ministry cites the following provisions which, if applicable, weigh in favour of privacy protection:

- the information describes an individual's finances - section 21(3)(f)
- the information is highly sensitive - section 21(2)(f)
- the information was supplied in confidence - section 21(2)(h)

The appellant's representations state that he needs the information in order to ascertain who arranged the "illegal garnishment" against him. He states that access to this information would permit him to take action against those who are responsible. By inference, the appellant is raising section 21(2)(d) (fair determination of rights).

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

- (1) Certain portions of the information describe the finances of an individual other than the appellant and, therefore, satisfy the presumption in section 21(3)(f). This personal information does not fall within the ambit of section 21(4); nor does the appellant claim that section 23 applies.
- (2) The balance of the personal information of individuals other than the appellant 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.
- (3) It appears that there may exist a legal right related to a proceeding contemplated by the appellant. However, he has not demonstrated that the personal information of the other individuals is required to prepare for any proceeding relating to that right, nor that it is necessary to ensure an impartial

hearing in that regard. I, therefore, find that section 21(2)(d) is not a relevant consideration in this appeal (Order P-312).

- (4) Accordingly, the exemption in section 49(b) applies to the severed portion of Page 10, and Pages 13-16, 90, 103-105, 107 and 114-117 in their entirety.

### **SOLICITOR-CLIENT PRIVILEGE**

The Ministry claims that section 19 of the Act applies to exempt Pages 43 and 44 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).

These pages constitute a memorandum from the Regional Counsel of the F.S.P. to a F.S.P. staff member. The Ministry asserts that this document is a confidential written communication between a solicitor and a client directly related to the seeking, formulating or giving of legal advice or assistance. Thus it claims that Branch 1 applies. Moreover, because the memorandum constitutes correspondence prepared by counsel for the purpose of advising staff as to certain actions which they should take, the Ministry submits that the second branch of the exemption has been satisfied.

Not all documents prepared by legal counsel will qualify for exemption under section 19 of the Act. As claimed by the Ministry in this case, both branches of the exemption contain a "legal advice" element. This term is not defined in the Act but has been interpreted in a number of previous orders. Generally speaking, legal advice will include a legal opinion about a legal issue, and a recommended course of action, based on legal considerations, regarding a matter with legal implications.

Having reviewed the memorandum and the representations of the Ministry, I am of the view that the element of "legal advice" is not present. The memorandum contains a chronological description of the relevant facts and then requests the F.S.P. staff member to undertake certain actions. I believe that once counsel was apprised of the results of these actions, it was contemplated that she would prepare a document containing her advice as to how the Ministry should address the concerns. However, Pages 43 and 44 contain no such information.

Accordingly, I find that neither branch of the section 19 exemption applies. Therefore, I need not consider the application of section 49(a) of the Act.

### **ORDER:**

1. I uphold the decision of the Ministry to deny access to the severed portion of Page 10, and Pages 13-16, 90, 103-105, 107 and 114-117 in their entirety.
2. I order the Ministry to disclose Pages 43 and 44 to the appellant within fifteen (15) days of the date of this order.
3. In order to verify compliance with the provisions of 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 2.

Original signed by: \_\_\_\_\_  
Anita Fineberg  
Inquiry Officer

\_\_\_\_\_ November 9, 1994

## APPENDIX "A"

### INDEX OF RECORDS AT ISSUE

<b>PAGE NUMBER</b>	<b>DESCRIPTION OF RECORDS</b>	<b>EXEMPTIONS OR OTHER SECTION(S) CLAIMED ON RECORD</b>	<b>DECISION WITHHELD IN WHOLE OR IN PART</b>
10	Computer printout on Case Enforcement History	21/49(b) (two entries withheld)	Decision Upheld
13-16	Correspondence exchanged between the F.S.P. and counsel to the support recipient	21/49(b)	Decision Upheld
43-44	Memorandum from the F.S.P. counsel to enforcement staff	19/49(a)	Disclose in full
90, 103-105, 107, 114-117	Correspondence exchanged between the F.S.P. and the support recipient	21/49(b)	Decision Upheld