



Information and Privacy
Commissioner/Ontario

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

ORDER P-969

Appeal P-9500030

Ministry of Community and Social Services



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NATURE OF THE APPEAL:

The Ministry of Community and Social Services (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to the contents of the eligibility review officer's (ERO) file, the parental support worker's file, the Ministry's corporate file and any other file pertaining to the requester. The Ministry granted partial access to the responsive records. The requester appealed the decision to deny access to the remaining records.

The records requested were generated as part of an investigation conducted by the Ministry to determine whether the appellant was entitled to continue to receive social assistance as a single person under the Family Benefits Act (the FBA).

The records to which the Ministry denied access consist of the ERO report, handwritten and typed letters, facsimile sheets, client history sheets, consumer enquiries, driver's licence history search and statements of fact. The records are listed in Appendix "A" to this order and all have been withheld in their entirety with the exception of Records 1-4 which were withheld in part.

The Ministry relies on the following exemptions to deny access to the records:

- law enforcement/discretion to refuse requester's own information - sections 14(1) and 49(a)
- invasion of privacy - section 49(b)

A Notice of Inquiry was provided to the appellant and the Ministry. Representations were received from both parties.

PRELIMINARY MATTER

In its representations, the Ministry has raised the possible application of sections 14(1)(g) and 14(2)(a) to some of the records.

It has been determined in previous orders that the Commissioner has the power to control the process by which inquiry is undertaken (Orders P-345 and P-537). This includes the authority to set time limits for the receipt of representations and to limit the time during which an institution can raise discretionary exemptions not claimed in its decision letter.

Upon receipt of the letter of appeal, the Ministry was notified, by way of a Confirmation of Appeal notice, that it had 35 days from the date of the notice to raise any additional discretionary exemptions not claimed in the decision letter.

In Order P-658, Inquiry Officer Anita Fineberg concluded that in cases where a discretionary exemption is claimed late in the appeals process, a decision-maker has the authority to decline to consider the discretionary exemption. I agree with Inquiry Officer Fineberg's reasoning and adopt it for the purposes of

this appeal.

The Ministry has provided no explanation for the delay in raising the additional discretionary exemptions. In my view, a departure from the 35-day timeframe is not justified in the circumstances of this appeal. Therefore, I will not consider the application of sections 14(1)(g) and 14(2)(a) in this order.

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.

I have carefully reviewed the information in all the records. I find that Records 25 and 26 contain information which relates solely to the appellant and constitutes her personal information. I find that the remaining records (Records 1-24) contain personal information which relates to the appellant, the alleged co-resident and other identifiable individuals. In the circumstances of this case, the alleged co-resident has not consented to the disclosure of his personal information to the appellant.

Some of the records contain other references to individuals, which appear by virtue of their employment functions or duties and do not constitute the personal information of these individuals.

DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION

Under section 49(a) of the Act, the Ministry has the discretion to deny access to an individual's own personal information in instances where certain exemptions would otherwise apply to that information. The Ministry submits that sections 14(1)(a), (b) and (c) apply to Records 5-26.

Sections 14(1)(a), (b) and (c) state:

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

- (a) interfere with a law enforcement matter;
- (b) interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
- (c) reveal investigative techniques and procedures currently in use or likely to be used in law enforcement.

In order for a record to qualify for exemption under these sections, the investigation which generated the records must first satisfy the definition of the term "law enforcement" as found in section 2(1) of the Act. This definition reads 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).

Previous orders of the Commissioner have found that investigations conducted under section 19 of the FBA qualify as "law enforcement matters" for the purpose of section 2(1) of the Act (Order 139).

With respect to sections 14(1)(a) and (b), the Ministry states that the information in the records relates to an investigation into the appellant's continuing eligibility for welfare benefits. The Ministry submits that the matter is ongoing as criminal charges may be laid and a hearing is scheduled before the Social Assistance Review Board (SARB). It is the Ministry's position that the investigation and law enforcement matter is ongoing until it is disposed of by SARB and/or the courts.

The Ministry points out that alternative avenues of access to the records are available to the appellant, at the appropriate time, through the hearings process before SARB and the discovery process in the event of criminal proceedings. The Ministry submits that disclosure of the records through a request filed under the Act would be premature and would prejudice the Ministry's position at the SARB hearing.

I have carefully reviewed the information in the records together with the representations of the parties. I find that Records 5-15, 20, 22, 23 and 24 contain information generated as a result of a law enforcement matter or an investigation undertaken with a view to a law enforcement proceeding and that disclosure of the records would interfere with such matters. I find that these records are exempt from disclosure under section 14(1)(a), and section 49(a) of the Act applies.

Based on the evidence before me, I am not satisfied that a reasonable possibility exists that disclosure of the information in Records 16-19, 21, 25 and 26 would lead to the harm alleged in sections 14(1)(a) or (b).

The Ministry has also claimed section 14(1)(c) for these records. The Ministry submits that in the course of the investigation, the ERO employs many investigative techniques and methods and that disclosure of the records would reveal these techniques and procedures.

The appellant states that the investigative techniques and procedures employed by the eligibility review

officers are set out in a manual which can be accessed by the public and are available to the appellant. The appellant included photocopies of the relevant parts of the manual with the representations.

For the purposes of section 14(1)(c), in order to constitute "an investigative technique or procedure", the Ministry must show that disclosure of the technique or procedure to the public would hinder or compromise its effective utilization. The fact that a particular technique or procedure is generally known to the public would normally lead to the conclusion that such compromise would not be effected by disclosure (Order 170). I agree with this interpretation and adopt it for the purposes of this appeal.

In my view, the Ministry has not shown how disclosure of the information in these records would hinder or compromise the effectiveness of the techniques or procedures employed by the Ministry and consequently, section 14(1)(c) does not apply.

I have previously found that Records 25 and 26 contain information that relates solely to the appellant. The Ministry has not claimed any other discretionary exemption for these records and no mandatory exemptions apply. Records 25 and 26 should therefore be disclosed to the appellant.

I have previously found that Records 1-4, 16-19 and 21 contain personal information of both the appellant and other identifiable individuals. I will now consider whether section 49(b) of the Act applies to the personal information in these records.

RECORDS THAT CONTAIN THE PERSONAL INFORMATION OF THE APPELLANT AND OTHER IDENTIFIABLE INDIVIDUALS

INVASION OF PRIVACY

Under section 49(b) of the Act, where a record contains the personal information of both the appellant and another individual 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 the personal information in Records 1-4, 16-19 and 21.

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.

The Ministry submits that the presumption in section 21(3)(b) applies to the records because the personal information was obtained from third parties during the investigation. The Ministry therefore states that the personal information was compiled and is identifiable as part of an investigation into a possible violation of law, a compliance investigation under the FBA.

I have carefully reviewed the information in Records 1-4, 16-19 and 21, and I find as follows:

- (1) The records contain information which was compiled and is identifiable as part of an investigation into a possible violation of law (the FBA) and accordingly, the presumed unjustified invasion of privacy in section 21(3)(b) applies.
- (2) None of the personal information contained in the records falls under section 21(4) and the appellant has not raised the possible application of section 23 of the Act.
- (3) I find that disclosure of the information in Records 1-4, 16-19 and 21 would constitute an unjustified invasion of privacy of the other individuals and the records are exempt from disclosure under section 49(b) of the Act.

ORDER:

1. I uphold the Ministry's decision to deny access to Records 5-24 in their entirety and to the severed portions of Records 1-4.
2. I order the Ministry to disclose to the appellant Records 25 and 26 in their entirety within fifteen (15) days of the date of this order.
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 records which are disclosed to the appellant pursuant to Provision 2.

Original signed by: _____
 Mumtaz Jiwan
 Inquiry Officer

_____ July 31, 1995

APPENDIX A

INDEX OF RECORDS AT ISSUE Appeal Number P-9500030

RECORD NUMBER(S)	DESCRIPTION OF RECORDS WITHHELD IN WHOLE OR IN PART	EXEMPTIONS OR OTHER SECTION(S) CLAIMED	DECISION ON RECORD
1	Handwritten letter dated August 28, 1992	49(b)	Upheld
2	Handwritten letter dated March 12, 1990	49(b)	Upheld
3	Handwritten letter dated January 9, 1990	49(b)	Upheld
4	Referral for Eligibility Review	49(b)	Upheld
5	ERO Report	14(1)	Upheld
6	Client History Sheets	14(1)	Upheld
7	Handwritten letter dated October 28, 1994	14(1)	Upheld
8	Letter to Ministry dated October 17, 1994	14(1)	Upheld
9	Letter to Ministry dated October 3, 1994	14(1)	Upheld
10	Letter to Ministry dated September 28, 1994	14(1)	Upheld
11	Letter to Ministry dated September 21, 1994	14(1)	Upheld
12	Statements of Fact	14(1)	Upheld
13	Letter to Ministry dated August 30, 1994	14(1)	Upheld
14	Driver's Licence History Search	14(1)	Upheld
15	Letter from Ministry dated October 3, 1994	14(1)	Upheld
16	Letter from Ministry dated October 3, 1994	14(1) and 49(b)	Upheld
17	Letter from Ministry dated September 26, 1994	14(1) and 49(b)	Upheld
18	Letter from Ministry dated September 22, 1994	14(1) and 49(b)	Upheld
19	Letter from Ministry dated September 19, 1994	14(1) and 49(b)	Upheld
20	Request for Search to Ministry of Transport	14(1)	Upheld
21	Letter from Ministry dated September 7, 1994	14(1) and 49(b)	Upheld
22	Letter from Ministry dated August 29, 1994	14(1)	Upheld
23	Request to Ministry of Transport	14(1)	Upheld

RECORD NUMBER(S)	DESCRIPTION OF RECORDS WITHHELD IN WHOLE OR IN PART	EXEMPTIONS OR OTHER SECTION(S) CLAIMED	DECISION ON RECORD
24	Consumer Enquiries	14(1)	Upheld
25	Fax Cover Sheet and Confirmation	14(1)	Disclose
26	Fax Cover Sheet and Confirmation	14(1)	Disclose