



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

ORDER P-1056

Appeal P-9500344

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 Ministry of the Attorney General (the Ministry) received a request for all information in a specific case file under the Family Support Plan (the FSP). The request was made by the payor spouse.

The Ministry granted partial access to the requested information. The Ministry denied access to the records at issue in this appeal on the basis of the following exemptions in the Act:

- invasion of privacy - section 21
- law enforcement - section 14
- discretion to refuse requester's own information - section 49(a).

The requester (now the appellant) appealed this decision. Subsequently, the Ministry issued a supplemental decision letter in which it claimed the exemption in section 49(b) in addition to the section 21 claim. Section 49(b) provides an exemption which may be claimed for records containing a requester's personal information, in circumstances where disclosure would constitute an unjustified invasion of the personal privacy of individuals other than the requester.

During mediation, two individuals whose interests might be affected by disclosure of the information contained in the records at issue (the affected parties) were contacted by this office. The affected parties objected to the disclosure of any information which pertained to them.

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

The records at issue consist of the following:

- support registration forms, including duplicates of the form in various stages of completion (withheld in their entirety) (pages 9, 11 - 14, 25 and 27 - 29)
- statements of arrears (withheld in their entirety) (pages 16 - 18 and 30)
- new information/request forms (withheld in their entirety) (pages 15 and 24)
- two letters from the FSP on which only the name and address of the recipient has been withheld (pages 5 and 22).

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.

In his representations, the appellant indicates that the Ministry described the records at issue as

“administrative material”. In his view, this description implies that the records pertain to matters internal to the FSP.

I have reviewed the records at issue and I find that they all contain the personal information of the appellant. The records at issue also all contain the personal information of other identifiable individuals.

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 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) and (3) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the personal privacy of the individual to whom the information relates. 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 disclosure of pages 15 - 18 of the records, which consist of a new information/request form, a statement of arrears and a list of support payments would constitute a presumed unjustified invasion of privacy as these pages contain financial details pertaining to one of the affected parties (section 21(3)(f)).

The Ministry submits further that the following factors also apply to this information as well as the remaining personal information at issue:

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

In support of these exemptions, the Ministry provides some background on the role of the office of the Director of the FSP. Essentially, in response to the significant social problem of spousal and child support arrears, the Family Support Plan Act established an administrative system of enforcement of support orders. All support orders made by a court in Ontario, on or after July 2, 1987, are filed in the Director’s office by the Court and enforced by the Director. The Ministry indicates that the Director, in effect, acts as a protective shield between the support payor and recipient in what is, often, a very acrimonious and adversarial relationship. In this context,

information about the parties held by the Director is considered highly sensitive. Moreover, it is essential that the parties be able to communicate with the Director in confidence without the fear that the other party will have access to these communications.

The appellant states that the records contain information which constitutes a claim against him. Further, he submits that he has a right to receive this information in order to “know his accuser and to know the merits of the charges against him”. The appellant adds that to deny him this information is a denial of justice. In my view, the appellant has raised a consideration which is not listed in section 21(2), but which has been addressed in a previous order of the Commissioner’s office. In Order P-1014, Inquiry Officer John Higgins identified this consideration as “adequate degree of disclosure”. This consideration, which favours disclosure, relates to the fairness of administrative processes, and the need for a degree of disclosure to the parties which is consistent with the principles of natural justice.

After considering the records at issue and the representations of the parties, I make the following findings.

1. Certain portions of the information in records at issue contain information pertaining to the enforcement of a support order or to the support of an individual. These records contain details and/or references to the financial history or activities of the individuals referred to in them. Accordingly, I find that these portions satisfy the presumption in section 21(3)(f) of the Act.
2. Even if I were to find that the consideration raised by the appellant applied in the circumstances of this appeal, the Divisional Court’s decision in the case of John Doe v. Ontario (Information and Privacy Commissioner) (1993) 13 O.R. 767 held that the factors in section 21(2) cannot be used to rebut the presumptions in section 21(3). Accordingly, this consideration cannot apply to those portions of the records to which I have found section 21(3)(f) applies.
3. With respect to the balance of the personal information of individuals other than the appellant, I am satisfied that given the nature of the circumstances in which this information is collected, namely, as part of the enforcement of support orders through the Director’s office, it is reasonable to expect that this information would be considered to be highly sensitive, and would have been provided in confidence. Accordingly, I find that sections 21(2)(f) and (h) apply to this information.
4. The appellant has not demonstrated that the consideration requiring adequate disclosure applies to the personal information to which I have found sections 21(2)(f) and (h) apply. Accordingly, I find that this consideration does not apply.
5. Sections 21(4) and 23 do not apply to the information at issue in this appeal, and accordingly, the exemption in section 49(b) of the Act applies.

Because of the findings I have made, it is not necessary for me to consider the possible application of sections 14 and 49(a).

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
Laurel Cropley
Inquiry Officer

_____ November 22, 1995