



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

ORDER P-1057

Appeal P-9500345

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 from a payor spouse for all information in a specific case file under the Family Support Plan (the FSP). The requester indicated that he only wished to receive copies of information which had been added to the file since a specified date.

The requester also referred to records released to him pursuant to a previous request and indicated that he wished to receive a copy of a lawyer's letter which is referred to on one of the released pages. The requester indicated that if the lawyer's letter was located in another file, he wished to receive copies of any other correspondence related to it or to himself which is contained on this other file.

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(1)
- advice and recommendations - section 13(1)
- discretion to refuse requester's own information - section 49(a).

Further, the Ministry indicated that the lawyer's letter was included as a record responsive to the requester's previous request to which access had been denied. Despite this, the Ministry included the lawyer's letter as a record responsive to the current request and issued a decision regarding it. In this regard, the Ministry denied access to the letter on the basis of section 21.

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 an FSP New Information/Request Form (page 13), a letter from the FSP Enforcement Manager to an affected party (page 18), a Direct Deposit form (page 32) and the lawyer's letter referred to above (page 47). These records have been withheld in their entirety pursuant to sections 21 and/or 49(b). The Ministry also included page 48 as a responsive record. However, I note that this is the page which was referred to by the appellant in his request. This page was released to the appellant as a result of his previous request and is not at issue in this appeal. I will, therefore, not consider it further. Three additional pages, consisting of two handwritten notes and a briefing note have been withheld pursuant to sections 13(1) and 49(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.

In his representations, the appellant indicates that the Ministry described the records at issue as “administrative material”. In his view, this description implies that these records also contain material which does not fall within the definition of personal information.

I have reviewed the records at issue and I find that, with the exception of page 32 (the direct deposit form), they all contain the personal information of the appellant. The records at issue also all contain the personal information of other identifiable individuals. Page 32 does not contain the appellant’s personal information, but does contain the personal information of another identifiable individual.

The Ministry has claimed sections 13(1) and 49(a) to exempt pages 1, 16 and 23/24. However, in my view, it is appropriate, in the circumstances of this appeal, to consider these pages under section 49(b).

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. For these records (pages 1, 13, 16, 18, 23/24 and 47), I will consider whether disclosure would be an unjustified invasion of the personal privacy of other individuals under section 49(b).

Where, however, a record **only contains the personal information of other individuals**, and the release of this information would constitute an unjustified invasion of the personal privacy of this individual, section 21(1) of the Act prohibits the Ministry from releasing this information. For this record (page 32), I will consider whether disclosure would be an unjustified invasion of personal privacy under section 21(1).

Under both sections 21(1) and 49(b), sections 21(2) and (3) of the Act provide guidance in determining whether disclosure of personal information would result in 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 disclosure of page 32 (a direct deposit form) would constitute a presumed unjustified invasion of privacy as this page contains banking information pertaining to one of the affected parties. The Ministry also submits that page 18 (letter to an affected party from the FSP Enforcement Manager) contains information pertaining to the employment or educational history of an individual and its disclosure would be a presumed unjustified invasion of personal privacy.

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 indicates that court orders are public records. He submits that any personal information required to be provided or which is subject to an order or the enforcement of the order should also become public information. In this regard, he states that "[f]or the [FSP] to be allowed to invoke such provisions of the Act is tantamount to giving them unilateral powers of seizure of property without the responsibility of justifying their action on the grounds that their justification would violate somebody's personal information." In my view, the appellant has raised the possible application of one factor which weighs in favour of disclosure, found in section 21(2)(a) (public scrutiny) of the Act.

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

1. Certain portions of the information in the 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 they 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) apply.
3. I agree with the appellant that a government organization should not be permitted unfettered discretion in the manner in which it carries out its mandate. However, the appellant has not demonstrated that disclosure of the personal information of the other individuals, in the circumstances of this appeal, is desirable for the purpose of subjecting the activities of the FSP to public scrutiny. Section 21(2)(a), therefore, does not apply.
4. Accordingly, I find that the exemption in section 49(b) applies to pages 1, 13, 16, 18, 23/24 and 47 in their entirety, and that page 32 in its entirety is exempt under section 21(1).

Because of the findings I have made, it is not necessary for me to consider the possible application of sections 13(1) and 49(a).

ORDER:

I uphold the Ministry's decision.

Original signed by: _____
Laurel Cropley
Inquiry Officer

_____ November 22, 1995