



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

ORDER P-1095

Appeal P-9500334

Ministry of Health



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). The Ministry of Health (the Ministry) received a detailed request under the Act for all records concerning the “Consumer/Survivor Development Initiative” (the CSDI), and the Ministry’s dealings with a number of funded projects which were identified by the requester.

The Ministry identified 14 categories of records responsive to the request and advised the requester that the estimated fee for processing this request would be \$522.50. The requester paid this fee in full. Access was granted in full to the records in nine of the categories. The Ministry denied access to portions of the records in the remaining five categories pursuant to the following exemptions under the Act

- third party information - section 17(1)
- invasion of privacy - section 21(1).

The requester appealed the Ministry’s decision on the following grounds:

- denial of access
- copies of certain records are illegible
- some documents provided and billed are not responsive to the request
- fees charged are unreasonable
- more records exist.

During mediation, the Ministry provided another copy of the records which were illegible and this issue has been satisfactorily resolved.

This office sent a Notice of Inquiry to the Ministry and the requester (now the appellant). Representations were received from the Ministry only. During the inquiry stage, the Commissioner’s office notified eight organizations which had received funds from the Ministry (the affected parties) that a request had been made for records pertaining to them. The affected parties were then invited to submit representations. Six affected parties objected to the disclosure of any information pertaining to them. One affected party consented to partial disclosure and one affected party did not respond. Only one of the affected parties submitted formal representations in support of its objections.

I will now describe the records and the exemption claims, using the Ministry’s record categories and numbers. The records at issue consist of the withheld portions of the following documents pertaining to each of the eight organizations referred to above.

Record Category 1

These records consist of a Form “A” - Authorization to Receive Program Funds for each organization. The home address and telephone numbers of the signing officers for each organization were withheld under section 21(1). The name, address, account number, and in some cases, transit and bank numbers of each organization’s bank were withheld under section 17(1).

Record Category 4

These records consists of Quarterly Reports from the date the projects began receiving funds. Portions of the table which indicate salaries and income, as well as the net and total operating expenses (or information which could be used to calculate the actual salaries) for each organization were withheld under section 21(1).

Record Category 5

These records consist of Auditor's Reports from the date the projects began receiving funds. Portions of the reports which indicate salaries or which could be used to calculate the actual salaries for each organization were withheld under section 21(1).

Record Category 6

These records contain the Annualized Operating Budgets and Operating Plans from the date the projects first began receiving funding. Portions of the reports which indicate salaries or which could be used to calculate the actual salaries for each organization were withheld under section 21(1). The home addresses and telephone numbers of the members of the Boards of Directors for some of the organizations were also withheld under section 21(1).

Record Category 7

These records consist of Ministry of Health Comparative Statement of Revenue and Expenditures. Portions of the reports which indicate salaries or which could be used to calculate the actual salaries for each organization were withheld under section 21(1).

PRELIMINARY MATTER:

NON-RESPONSIVE RECORDS

The appellant indicates that one particular memorandum in Record Category 2 (which was disclosed to the appellant) is not responsive to the request and she should not have been billed for it. The record is a covering memorandum attached to a consumer group survey which details the distribution of funding to consumer groups.

The appellant's request indicated that she was interested in funding information concerning the Ministry's CSDI, particularly with respect to the projects she identified in the request. The memorandum and attachment, while not directly related to a particular project, do concern the issue of funding of these projects. In my view, the request is broad enough to encompass this type of information. Accordingly, I find that the memorandum and attachment which were disclosed to the appellant are responsive to this request.

DISCUSSION:

THIRD PARTY INFORMATION

As I indicated above, the Ministry claims that the name, address, account number, and in some cases, transit and bank numbers of each organization's bank are exempt under section 17(1)(b) of the Act. One affected party has consented to the disclosure of the name and address of its bank. As no other exemptions have been claimed for this information of the consenting party, it should be disclosed to the appellant.

For a record to qualify for exemption under section 17(1)(a), (b) or (c) the Ministry and/or the affected parties must satisfy each part of the following three-part test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; **and**
2. the information must have been supplied to the institution in confidence, either implicitly or explicitly; **and**
3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in (a), (b) or (c) will occur.

[Order 36]

Part One

I have reviewed the portions of the records to be considered under this section. In my view, financial information is information pertaining to finance or money matters. I find that the portions of the records which have been withheld under section 17(1) pertain to the banking arrangements made by each organization, and they contain financial information. Accordingly, part one of the test has been satisfied with respect to these portions of the records.

Part Two

In order to satisfy part two of the test, the affected parties must show that the information was supplied to the Ministry and that it was supplied in confidence, either implicitly or explicitly. In addition, information contained in a record will be said to have been "supplied" to an institution, if its disclosure would permit the drawing of accurate inferences with respect to the information actually supplied to the Ministry.

Both the Ministry and one affected party submit that the banking information was supplied to the Ministry. The affected party indicates that this information was supplied solely to facilitate the necessary financial transactions between the Ministry and the organization. The Ministry

indicates that in order to be eligible for funding, the consumer/survivor groups were required to complete and submit the forms in Record Category 1 to the Ministry. I find that the withheld banking information in the records in Record Category 1 was supplied to the Ministry by the affected parties.

To satisfy the “in confidence” element, there must be a reasonable expectation on the part of the supplier of the information that it will be held in confidence. The Ministry indicates that it has a long-standing practice of accepting and treating funding proposals confidentially. The Ministry states further that it has maintained the confidentiality of the proposals since their receipt. The representations of the affected party confirms the understanding that this information would be maintained in confidence. I find that the expectation of confidentiality held by the affected parties was reasonable in the circumstances and part two of the test has been satisfied.

Part Three

I will now consider whether disclosure of the financial information contained in the records in Record Category 1 could reasonably be expected to result in the harms described in section 17(1)(b) of the Act. This section provides that:

A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to,

result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied.

In its representations, one affected party states that:

There is a reasonable expectation that disclosure of the record will result in this information no longer being supplied to the Ministry. It is in the public interest that similar information continue to be provided to the Ministry to lessen the cost of administering this or similar programs.

The Ministry states that disclosure of the banking information in the records would allow another party to obtain more detailed and descriptive information about the groups such as financial assets or liabilities. The Ministry submits that it is reasonable to expect that public disclosure of such information would inhibit future CSDI applicants from including their banking information in response to new requests for proposals. The Ministry suggests that this would jeopardize the effectiveness of the initiatives.

As I noted above, the Ministry indicates that in order to be eligible for funding, the consumer/survivor groups were required to complete and submit the forms in Record Category 1 to the Ministry. This included providing their banking information. As it is in their interest to continue to receive funding for Ministry sponsored initiatives and programs, I do not find it

reasonable to expect that the affected parties would no longer provide this information to the Ministry. Accordingly, I find that disclosure of this information could not reasonably be expected to result in the harms described in section 17(1)(b) of the Act.

In its representations, which I have referred to above, the Ministry indicates that disclosure of the banking information in the records would allow another party to obtain more detailed and descriptive information about the groups such as financial assets or liabilities. In my view, this implicitly raises the possible application of sections 17(1)(a) and (c) of the Act. As section 17 is a mandatory exemption, I will consider whether disclosure of this information could reasonably be expected to result in the harms described in these two sections. Sections 17(1)(a) and (c) provide that:

A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to,

- (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- (c) result in undue loss or gain to any person, group, committee or financial institution or agency.

Although the Ministry suggests that disclosure of the organizations' banking information could result in more financial information being made accessible to other interested parties, it does not indicate how this could happen, or specifically what type of information could be accessed, or how this might result in one of the harms identified above. The affected party which made representations did not make any reference to this concern. Some of the other affected parties who contacted this office to object to disclosure did raise this concern, however, no reasons were provided to support their objection.

In my view, the concern raised by the Ministry is entirely lacking in supporting detail, and I find that a reasonable expectation of the harms referred to in sections 17(1)(a) and (c) has not been established in the particular circumstances of this appeal.

Since the third part of the section 17(1) test has not been met regarding this information, it does not qualify for exemption. No other exemptions have been claimed for this information. Accordingly, the banking information found on the records in Record Category 1 should be disclosed to the appellant.

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.

I have reviewed the information which has been withheld. I find that the home address and telephone numbers of the signing officers and/or members of the Boards of Directors found in Record Categories 1 and 6 constitute the personal information of the individuals identified in the records.

Letter #3 in Record Category 7 contains the exact salary of one named individual and remuneration paid to another named individual. I find that this information constitutes the personal information of these two named individuals.

As I indicated above, personal information is defined in section 2(1) of the Act, in part, as “recorded information about an **identifiable** individual”. [emphasis added]

It is clear that the remaining information at issue does not refer to any named individual(s). However, it must be determined whether any individuals may nonetheless be identifiable given the information contained in the record.

The Ministry indicates that the remaining information which has been withheld from the records consists of various organizations’ salary expenditures. The Ministry submits that this information can be linked to other information in the records which have been released to the appellant, such as the numbers of full-time equivalent positions and the names of individual position holders in each organization. Disclosure of this information would reveal the personal incomes of staff in these organizations.

The appellant submits that the figures contained in most of these records are given in aggregate terms and do not reveal what any specific individual earns.

In reviewing the records, I note that in some cases the actual salary for a position is listed, as well as the total salary amounts for each organization. In those cases where aggregate numbers are provided, I note that the number of staff for each organization is small.

In Order P-230, Commissioner Tom Wright stated:

If there is a reasonable expectation that the individual can be identified from the information, then such information qualifies under subsection 2(1) as personal information.

I agree with this approach and adopt it for the purposes of this appeal.

In the circumstances of this appeal, given the small number of individuals, the nature of the information at issue, and the information which has been disclosed to the appellant, I am of the view that there is a reasonable expectation that the release of the information would disclose information about **identifiable** individuals. Accordingly, I find that the withheld portions of the

records which consist of salary figures or which would reveal salary amounts qualify as the personal information of individuals other than the appellant.

Once it has been determined that a record contains personal information, section 21(1) of the Act prohibits the disclosure of this information except in certain circumstances. Specifically, section 21(1)(f) of the Act reads as follows:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

if the disclosure does not constitute an unjustified invasion of personal privacy.

Sections 21(2), (3) and (4) 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. Section 21(2) provides some criteria for the head to consider in making this determination. Section 21(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy. Section 21(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy. Once a presumption against disclosure has been established, it cannot be rebutted by either one or a combination of the factors set out in section 21(2).

The only way in which a section 21(3) presumption can be overcome is if the personal information at issue falls under section 21(4) of the Act or where a finding is made under section 23 of the Act that a compelling public interest exists in the disclosure of the record in which the personal information is contained, which clearly outweighs the purpose of the section 21 exemption.

The appellant did not expressly address the issues relating to disclosure of the addresses and telephone numbers of the signing officers and members of the Boards of Directors. She submitted generally, however, that full disclosure of the records in this appeal is necessary to allow for appropriate scrutiny and debate about government programs and services, particularly as it applies to value for money in the current economic times. In making these arguments, the appellant has implicitly raised the possible application of sections 21(2)(a) (public scrutiny) and 23 (public interest override).

The Ministry states that this information is highly sensitive (section 21(2)(f)).

In my view, in the circumstances of this appeal, no connection has been made between the home addresses and telephone numbers of the individuals referred to in the records and any possible public interest for which public scrutiny is warranted. Accordingly, I find that section 21(2)(a) does not apply to this information.

The Ministry indicates that disclosure of the salary information (or information which would reveal the salaries of identifiable individuals) would be a presumed unjustified invasion of personal privacy under section 21(3)(f) (describes an individual's finances, etc.).

The appellant submits that the financial details in Letter #3 found in Record Category 7 represent a fee for service for an individual who was no longer an employee of the particular organization. Thus, the appellant argues, disclosure of this information would not reveal this individual's total income or any other financial details pertaining to her.

I disagree. The individual referred to in this document was a former employee of the organization who was retained by the organization to facilitate the transition of another individual into her former position. In my view, the remuneration she received amounts to income and thus falls within the presumption in section 21(3)(f). Further, there is nothing in section 21(3)(f) which requires that the financial details reflect "total" income. Accordingly, I find that disclosure of the personal information which has been withheld from this document would constitute a presumed unjustified invasion of personal privacy pursuant to section 21(3)(f).

Similarly, I find that disclosure of the remaining personal information in Record Categories 4, 5, 6, and 7 (which consists of actual salary figures as well as information which could be used to calculate the actual salaries, for each organization) would constitute a presumed unjustified invasion of personal privacy under section 21(3)(f).

Even if I were to find that section 21(2)(a) 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.

To summarize, I have found that no factors exist which favour disclosure of the addresses and telephone numbers of the signing officers and/or members of the Boards of Directors which are found in records in Record Categories 1 and 6. Moreover, I have found that disclosure of the remaining personal information in the records would constitute a presumed unjustified invasion of personal privacy under section 21(3)(f). Section 21(4) is not applicable in the circumstances of this appeal. The personal information contained in the records is, therefore, properly exempt under section 21(1).

PUBLIC INTEREST IN DISCLOSURE

There are two requirements contained in section 23 which must be satisfied in order to invoke the application of the so-called "public interest override": there must be a **compelling** public interest in disclosure; and this compelling public interest must **clearly** outweigh the **purpose** of the exemption.

It is important to note that section 21 is a mandatory exemption whose fundamental purpose is to ensure that the personal privacy of individuals is maintained except where infringements on this interest are justified.

In considering the records and the arguments put forth by the appellant, I am not satisfied that there exists a **compelling** public interest in disclosure of the personal information which would **clearly** outweigh the **purpose** of the section 21 exemption. Accordingly, I find that section 23 of the Act does not apply.

REASONABLENESS OF SEARCH

As I indicated above, the appellant did not submit representations in response to the Notice of Inquiry. However, in her letter of appeal, she sets out in considerable detail the types of records that she believes should have been included in the records provided to her as well as her reasons for believing that they should exist.

Where a requester provides sufficient details about the records which she is seeking and the Ministry indicates that further records do not exist, it is my responsibility to ensure that the Ministry has made a reasonable search to identify any records which are responsive to the request. The Act does not require the Ministry to prove with absolute certainty that further records do not exist. However, in my view, in order to properly discharge its obligations under the Act, the Ministry must provide me with sufficient evidence to show that it has made a **reasonable** effort to identify and locate records responsive to the request.

The Ministry indicates that following receipt of the request, the Freedom of Information and Privacy Co-ordinator contacted the Branch responsible for the CSDI. The Ministry's representations include the sworn affidavits of the Community Program Consultant to the CSDI (the Consultant) and the Program Area Co-ordinator for the Mental Health Programs and Services Group (the Program Co-ordinator).

Both the Consultant and the Program Co-ordinator outline the locations of files which would contain records responsive to the request, and describe the steps taken to search for such records. Further, the Consultant indicates that he was contacted by the requester following the Ministry's initial release of the records in May, 1995. The requester indicated that more records should exist. The Consultant advised the requester that some of the information he was seeking had not yet been submitted to the Ministry. In July, 1995, the Ministry provided further records (approximately 154 pages) to the requester. These records contained information which was not available at the time of the request.

I have considered the affidavits provided by Ministry staff as well as the information provided by the appellant in her letter of appeal. I am satisfied that the Ministry's search for responsive records was reasonable in the circumstances of this appeal.

FEES

As previously noted, the appellant has objected to the fees charged by the Ministry in connection with this request.

The applicable provisions of the Act and Regulation 460 are found in sections 57(1) and 6 respectively. Section 57(1) of the Act permits fees to be charged for search time in excess of two

hours, and for time spent preparing records for disclosure. Charges for shipping are also permitted. Section 6 of Regulation 460 provides that search time in excess of two hours, and preparation time, may be charged at \$7.50 for each fifteen minutes.

The fees charged by the Ministry are as follows:

Search time in excess of two hours (6 3/4 hours @ \$7.50 per 15 minutes)	\$202.50
Severing record (4 hours @ \$7.50 per 15 minutes)	\$120.00
Photocopies (\$0.20 per page)	\$190.40
Shipping costs	\$ 10.00
TOTAL	\$522.90.

The Ministry indicates that it had originally provided the appellant with a fee estimate in the amount of \$522.50, which was paid by the appellant at that time. In its estimate, the Ministry overestimated the number of responsive pages and underestimated the amount of severing which would be required. The breakdown of the amounts noted above, therefore, were quite different from the final fee, although the difference in the total is only \$0.40.

In reviewing the fees charged by the Ministry, I will only consider the final fee breakdown as it reflects the actual costs associated with this request.

With regard to search time, the Ministry attached a copy of its breakdown of fees to its representations and indicates that the fees charged are in accordance with the Act and Regulation. The Ministry indicates that 8 3/4 hours were required to search for and locate responsive records.

In her affidavit (referred to in the previous discussion) the Program Co-ordinator indicates that the records related to this request would all be located in the central program filing area of the Mental Health Programs and Services Group. She indicates further that she was able to go directly to this area and pull out the individual project files in order to review the records contained therein.

In correspondence to the appellant, the Ministry indicates that the volume of records contained in the files is approximately five times greater than the number of records which are responsive to the request. As a result of its original search for records, the Ministry located 952 pages, which were released, in part, in May, 1995. The Ministry indicates that no fees were charged for the records which were released to the appellant in July, 1995.

In the circumstances of this appeal, given the large volume of records which had to be reviewed to locate responsive information, I am prepared to uphold the charges for search time.

As I noted above, the records responsive to this request total 952 pages. The Ministry withheld parts of 129 pages, indicating that it required 4 hours for severing. This amounts to just under 2 minutes per page. Some pages contained only one or two severances, however, other pages were extensively severed. Order P-565 found that 2 minutes per page is a reasonable amount to allow for severing, even where only a small number of severances are required per page. Accordingly, I find the time taken to sever the records to be reasonable, and I uphold this charge.

With respect to photocopying charges, the Ministry charged the appellant \$0.20 per page to photocopy 952 pages. The rate of \$0.20 per page is consistent with section 6(1) of the Regulation, and, accordingly, I uphold this charge. I am also prepared to allow the Ministry to recover its shipping costs of \$10.00.

Accordingly, I uphold the fee charged in the amount of \$522.90. The appellant has paid \$522.50 to the Ministry in accordance with its original fee estimate. In view of the small amount involved, the appellant will not be required to pay the difference.

ORDER:

1. The search for records was reasonable and this part of the appeal is denied.
2. I uphold the fee charged by the Ministry.
3. I uphold the Ministry's decision to withhold the personal information which it has identified in the records at issue.
4. I order the Ministry to disclose the parts of the records in Record Category 1 for which it has claimed section 17(1) to the appellant by sending copies of those records to the appellant on or before **February 9, 1996**.
5. To verify compliance with the terms of this order, I reserve the right to require that the Ministry provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 4.

Original signed by: _____
Laurel Cropley
Inquiry Officer

_____ January 10, 1996