



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

# **ORDER P-1209**

**Appeal P-9500514**

**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) from counsel on behalf of his client. Counsel sought access to copies of the files of the Ministry's Eligibility Review Officer and the Parental Support Worker as well as to any Ministry "corporate" files or any other files or documentation related to his client. In his request, counsel enclosed a copy of an authorization from both his client and another individual, the alleged co-resident, with respect to the disclosure of their personal information. Counsel indicated that he was requesting the information for the purpose of a Social Assistance Review Board (SARB) hearing involving a decision to retroactively disqualify his client from her allowance and benefits as a sole support parent for a specific time period.

The Ministry identified 28 records as being responsive to the request and provided partial access to seven of them. The Ministry denied access to the remaining portions of these seven documents and the other 21 records in their entirety pursuant to the following exemptions in the Act:

- law enforcement - sections 14(1)(b) and (g)
- invasion of privacy - sections 21(1) and 49(b)
- discretion to refuse access to requester's own information - section 49(a)

Counsel appealed the Ministry's decision. For ease of reference, in this order I shall refer to counsel's client as "the appellant".

After the appeal to this office was filed, the appellant's SARB hearing took place. At this hearing, the Ministry disclosed the majority of the records at issue in this appeal to the appellant. Currently, the following records remain at issue. They are numbered according to the system used by the Ministry in its decision letter.

- (1) Eligibility Review Officer Report dated March 8, 1995 - access denied in total under sections 14(1)(b) and (g), 21(1), 49(a) and (b);
- (3) Undated handwritten notes - access denied in part under section 21(1); and
- (6) Undated handwritten notes - access denied in part under section 21(1).

This office sent a Notice of Inquiry to the Ministry, the appellant and the alleged co-resident.

In its submissions, the Ministry states that, as all of the records were disclosed to the appellant at the SARB hearings, it is no longer claiming that any of the exemptions applied. However, the appellant still maintains that she has not received access in full to the three records listed above. The Ministry subsequently confirmed that the appellant was correct and it advised this office that it was once again relying on the original exemptions. However, it did not provide representations on the application of each of the exemptions to the records.

Sections 14(1)(b) and (g) are discretionary exemptions. I have reviewed the records and, in the absence of any submissions from the Ministry on their application, find that these exemptions do not apply.

The alleged co-resident advised this office that he did not wish any of his personal information disclosed to anyone at this time.

## **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 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 records to determine if they contain personal information and, if so, to whom that information relates. In my view, all the records contain the personal information of the appellant and other identifiable individuals, including the alleged co-resident.

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), (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 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.

A number of previous orders (Orders M-384, M-444, M-451 and M-757) have held that the disclosure of personal information relating to an individual other than the requester, in circumstances where the person requesting the information had originally provided it to the government organization, would not result in an unjustified invasion of personal privacy. I agree.

The appellant states that it is her understanding that Record 6 consists of handwritten notes of information provided by her to the Ministry. There is nothing on the face of this document to indicate that the information was received from the appellant. However, the notes which

constitute Record 3 were taken when the appellant was “cautioned” and do contain information given by her at that time. In these circumstances, Record 3 should be disclosed to the appellant in its entirety. In addition, as the appellant suggests, there is information contained in Record 1 that was provided by the appellant to the Ministry and the same principle of disclosure should apply.

As far as the balance of the personal information is concerned, I will first consider whether it satisfies any of the presumptions in section 21(3) of the Act. The records indicate that, upon receiving a complaint that the appellant was living with the alleged co-resident, the Ministry undertook an investigation. The records at issue were compiled and are identifiable as part of that investigation into a possible violation of the Family Benefits Act. On this basis, I find that the personal information is subject to the presumption in section 21(3)(b) of the Act which states:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

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. I find that disclosure of some of the personal information in Records 1 and 6 would constitute an unjustified invasion of privacy of the alleged co-resident and other identifiable individuals. Portions of Record 1 and the information withheld from Record 6 are thus exempt from disclosure under section 49(b) of the Act. I have highlighted the information on Record 1 which should not be disclosed to the appellant. The Ministry should disclose the non-highlighted portions of Record 1 as to do so would not constitute the unjustified invasion of the personal privacy of any identifiable individuals.

## **ORDER:**

1. I uphold the decision of the Ministry to deny access to the severed portions of Record 6 and the highlighted portions of Record 1 on the copy I have provided to the Freedom of Information and Privacy Co-ordinator of the Ministry with a copy of this order.
2. I order the Ministry to disclose to the appellant the non-highlighted portions of Record 1 and Record 3 in its entirety by sending her copies by **July 24, 1996** and not before **July 19, 1996**.
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 records which are disclosed to the appellant pursuant to Provision 2.

Original signed by: \_\_\_\_\_ June 19, 1996  
Anita Fineberg  
Inquiry Officer