



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

ORDER P-1269

Appeal P-9500756

Ministry of the Attorney General



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NATURE OF THE APPEAL:

The appellant made a request under the Freedom of Information and Protection of Privacy Act (the Act) to the Ministry of the Attorney General (the Ministry). The request was for access to any and all information pertaining to himself in the custody or under the control of the Ministry. The appellant was a support payer.

The Ministry identified 290 pages of records in its Family Support Division as being responsive to the request. The Ministry granted partial access to the records. The Ministry denied access to 65 pages in full and parts of 21 pages under the following exemptions:

- advice or recommendations - section 13
- law enforcement - sections 14(1)(a), (b), (c) and (d)
- solicitor-client privilege - section 19
- invasion of privacy - sections 21(1) and 49(b)
- discretion to refuse requester's own information - section 49(a)

The appellant appealed the Ministry's decision to deny access. A Notice of Inquiry was provided by the Commissioner's office to the appellant, the Ministry and the support recipient. Representations were received from the Ministry only. During the inquiry, the Ministry withdrew its application of section 19 to Records 55 and 126 and part of Record 50. These records or parts of records have been disclosed to the appellant and section 19 is no longer at issue in this appeal.

RECORDS:

The records remaining at issue consist of forms filled out by the Ministry or the support recipient (Records 17, 127, 165, 190, 194-195, 217, 222-226 and 269-271), computer printouts (Records 43, 50, 57, 62, 64, 67, 70, 72-77, 80, 82, 84, 92, 93, 118, 164, 171 and 213), memoranda and notes (Records 168, 172, 173 and 214), correspondence from the Ministry to the support recipient (Records 129-131, 150, 184, 196, 200, 208-210, 212, 216, 228, 278 and 290), and correspondence from the support recipient to the Ministry (Records 152-156, 166, 167, 174-183, 186-188, 191, 198, 199, 201, 202, 205, 206 and 219).

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. Having reviewed the records, I find that the majority of them contain the personal information of both the appellant and the support recipient. However, Records 17, 118, 126, 164 and 165 contain the personal information of the appellant only, and Records 84, 152, 166, 177, 178, 182-183, 194-195, 202, 205, 208-210 and 216 contain the personal information of the support recipient only. Additionally, in my view, the information which has been severed from Record 278 relates to individuals in their professional capacity and does not qualify as personal information.

Section 47(1) of the Act allows individuals access to their own personal information held by a government institution. However, section 49 sets out exceptions to this right.

Where a record contains the personal information of both the appellant and other individuals, section 49(b) of the Act allows the institution to withhold information from the record if it determines that disclosing that information would constitute an unjustified invasion of another individual's personal privacy. On appeal, I must be satisfied that disclosure **would** constitute an unjustified invasion of another individual's personal privacy. The appellant is not required to prove the contrary.

Where, however, the record only contains the personal information of other individuals, section 21(1) of the Act prohibits an institution from disclosing it except in the circumstances listed in sections 21(1)(a) through (f). Of these, only section 21(1)(f) could apply in this appeal. It permits disclosure if it "does not constitute an unjustified invasion of personal privacy."

Disclosing the types of personal information listed in section 21(3) is presumed to be an unjustified invasion of personal privacy. If one of the presumptions applies, the institution can disclose the personal information only if it falls under section 21(4) or if section 23 applies to it. If none of the presumptions in section 21(3) apply, the institution must consider the factors listed in section 21(2) as well as all other relevant circumstances.

The Ministry submits that, given the nature and purpose of the records, the information held by the Director is highly sensitive. The Ministry points out that it is essential that the parties are able to communicate with the Director in confidence without the fear that the information could be disclosed to the other party. On this basis, the Ministry states that sections 21(2)(f) and (h) apply to all of the remaining information in the records.

I have reviewed the information in the records together with the representations of the Ministry. I make the following findings:

1. With respect to the personal information of the other individuals named in the records, including the support recipient, I find that, given the nature of the circumstances in which this information was collected, namely, as part of the enforcement of a support order 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) are relevant considerations favouring privacy protection.
2. Having considered the nature of the information contained in the records, the Ministry's representations and the circumstances of this appeal, on balance, I am satisfied that disclosure of the personal information contained in the records would constitute an unjustified invasion of personal privacy.
3. Sections 21(4) and 23 do not apply in the circumstances of this appeal.

Accordingly, I uphold the Ministry's exemption claims under sections 21 and 49(b).

In light of this finding, it is not necessary for me to address the Ministry's other exemption claims for Records 74-76, 168, 172-173 and 222-226.

ADVICE OR RECOMMENDATIONS

The Ministry submits that section 13(1) of the Act applies to Records 17, 80, 118, 171 and 213. This section reads:

A head may refuse to disclose a record where the disclosure would reveal advice or recommendations of a public servant, any other person employed in the service of an institution or a consultant retained by an institution.

It has been established in a number of previous orders that advice or recommendations for the purpose of section 13(1) must contain more than mere information. To qualify as "advice" or "recommendations", the information contained in the records must relate to a suggested course of action, which will ultimately be accepted or rejected by its recipient during the deliberative process. Information that would permit the drawing of accurate inferences as to the nature of the actual advice and recommendation given also qualifies for exemption under section 13(1) of the Act. In addition, the information must relate to the **giving** of advice as opposed to seeking advice (Orders P-848 and P-872).

In Order 94, former Commissioner Sidney B. Linden commented on the scope of this exemption. He states that it "... purports to protect the free-flow of advice and recommendations within the deliberative process of government decision-making and policy-making".

Having reviewed the Ministry's representations and the records, I find that the notes, calculations and clarifications contained in the severed parts of these records do not relate to a suggested course of action to be considered within the deliberative process of government decision-making and policy-making, and section 13(1) of the Act does not apply.

LAW ENFORCEMENT

The Ministry submits that Records 164 and 165 qualify for exemption under section 14(1)(a), and that Records 164, 165 and 269-271 qualify for exemption under sections 14(1)(c) and (d). These sections read:

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

- (a) interfere with a law enforcement matter;
- (c) reveal investigative techniques and procedures currently in use or likely to be used in law enforcement;

- (d) disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source.

In order for a record to qualify for exemption under either of these sections, the matter to which the record relates must first satisfy the definition of the term “law enforcement”, found in section 2(1) of the Act.

In Order P-589, former Inquiry Officer Asfaw Seife found that information gathered by the FSP Branch under the Family Support Plan Act in enforcement of a support deduction order issued by the court against the appellant was a law enforcement matter. I agree with Inquiry Officer Seife’s determination and adopt it for the purposes of this appeal.

I find that disclosure of Records 164 and 165 could reasonably be expected to reveal investigative techniques and procedures currently in use. Therefore, these records qualify for exemption under section 14(1)(c), and section 49(a) of the Act applies.

Records 269-271 detail, in my view, what is more appropriately categorized as an enforcement technique as opposed to an investigative technique. In any event, its existence can be considered commonly known, since the authority to employ it comes from the Family Orders and Agreements Enforcement Assistance Act S.C. 1986, c. 5. Accordingly, I find that section 14(1)(c) does not apply to these records.

I have reviewed the information in Records 269-271, and I am not satisfied that there is a reasonable expectation of confidentiality with regard to the identity of the source of the information or the information provided by the source within the process under which these records were prepared. Accordingly, I find that section 14(1)(d) does not apply.

ORDER:

1. I uphold the Ministry’s decision not to disclose Records 62, 67, 72-76, 82, 84, 129-131, 150, 152-156, 164-168, 172-174, 177-179, 182-184, 186, 191, 194-196, 198-202, 205, 206, 208-210, 212, 214, 216, 217, 219, 222-226, 228 and 290.
2. I uphold the Ministry’s decision not to disclose parts of Records 43, 50, 57, 64, 70, 77, 92, 93, 127, 175-176, 180-181, 187-188, 190 and 278.
3. I order the Ministry to disclose Records 17, 80, 118, 171, 213 and 269-271 to the appellant by sending him a copy by **October 22, 1996**.
4. 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 3.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

October 2, 1996 _____