



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

# **ORDER PO-1750**

Appeal PA-990145-1

Ministry of the Attorney General



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## **BACKGROUND:**

In 1987, the Support and Custody Orders Enforcement Act (SCOEA) was enacted to address spousal and child support arrears. SCOEA was repealed in 1992 by the Family Support Plan Act (FSPA), which was subsequently repealed in 1997 by the Family Responsibility and Support Arrears Enforcement Act (FRSAEA). Pursuant to section 5(1) of the FRSAEA, the Director of the Family Responsibility Office is under a duty to enforce all “support orders” as defined in that Act which are filed with it.

When a support order is filed with the Family Responsibility Office, the support recipient is asked to complete and return a “filing package”. The package asks for information about the support recipient, the support payor and their dependents, and includes particular information about the support payor such as name, address and occupation, as well as information about income, property, banking and assets.

The appellant is required to pay support under a support order and is identified in the support enforcement process as the “support payor”.

## **NATURE OF THE APPEAL:**

The appellant made a request to the Ministry of the Attorney General (the Ministry) under the Freedom of Information and Protection of Privacy Act (the Act) for all information pertaining to a particular file related to himself at the Family Responsibility Office.

The Ministry granted partial access to the relevant records and denied access to 5 pages in whole and 1 page in part pursuant to sections 21 and 49(b) (invasion of privacy) of the Act. The Ministry issued a supplementary decision indicating it was also relying on section 14(1)(c) (law enforcement) to exempt pages 2, 3, and 4 of the record.

The appellant appealed the Ministry's denial of access.

During mediation, the appellant indicated that he is not seeking access to pages 1, 5 or 7 of the record. With respect to page 2, the appellant is only seeking information under the category “Income Information”. The appellant is seeking access to page 3 in its entirety. The appellant is also seeking access to the following categories on page 4 of the record: other sources of income; banking information; and information relating to assets.

I sent a Notice of Inquiry to the appellant, the Ministry and the support recipient (the affected person). Because the records appear to contain the appellant's personal information, this Notice also raised the possible application of section 49(a) (discretion to refuse requester's own information) in conjunction with section 14(1)(c).

Representations were received from the Ministry only.

## **RECORDS:**

The records at issue consist of three pages titled "Payor Information Form" (portions of pages 2 and 4, and page 3 in its entirety).

## **DISCUSSION:**

### **PERSONAL INFORMATION**

Under section 2(1) of the Act, "personal information" is defined as recorded information about an identifiable individual, including correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence.

The Ministry submits that the forms completed by the affected person are her private confidential correspondence to the Family Responsibility Office and thus qualify as her personal information under section 2(1)(f) of the Act. The Ministry acknowledges that the records also contain information about the appellant.

The portions of the records at issue contain information provided by the affected person regarding the appellant's income, property and assets and as such, they clearly contain recorded information "about" the appellant. Therefore, I find that the records contain the appellant's personal information. However, the information is recorded on part of a larger document which contains information about the affected person. As a whole, this record contains the personal information of both individuals.

### **INVASION OF PRIVACY**

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 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. 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.

The Divisional Court has stated that 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) [John Doe v. Ontario (Information and Privacy Commissioner) (1993), 13 O.R. (3d) 767].

A section 21(3) presumption can be overcome if the personal information at issue falls under section 21(4) of the Act or if 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 23 exemption.

In this case, the only exception to the section 21(1) exemption which could apply is section 21(1)(f). The Ministry has cited the factors in sections 21(2)(f) and (h) to support its position that section 21(1)(f) does not apply.

In his correspondence with the Ministry and this office the appellant indicates that he believes that the information regarding his finances and assets contained in the records is incorrect, thus raising the relevance of the factor in section 21(2)(g).

These sections read:

- (1) A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,
  - (f) if the disclosure does not constitute an unjustified invasion of personal privacy.
  
- (2) A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,
  - (f) the personal information is highly sensitive;
  - (g) the personal information is unlikely to be accurate or reliable;
  - (h) the personal information has been supplied by the individual to whom the information relates in confidence.

The Ministry states that in enforcing support orders, the Director acts as a conduit through which monies flow in order to help minimize the contact between the parties in recognition of the often acrimonious and adversarial nature of their relationship. In this context, the Ministry considers information about the parties held by the Director to be highly sensitive. Moreover, the Ministry states that in order for the Director to effectively enforce support orders, the parties must be able to communicate without the fear that the other party will have access to this highly sensitive information.

The Ministry refers to a line of orders from this office which have consistently upheld the application of the factors in sections 21(2)(f) and (h) to similar information (Orders P-1056, P-1198, P-1269 and P-1340). In Order P-1056, I concluded in upholding the application of sections 21(2)(f) and (h) that:

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.

In my view, these conclusions similarly apply in the current appeal. Therefore, I find that the factors in sections 21(2)(f) and (h) are relevant in the circumstances of this appeal. Moreover, in the overall scheme of the enforcement process, I find that these two factors weigh significantly in favour of privacy protection.

As I indicated above, the appellant believes that the information in the record may be inaccurate. In his letter of appeal, the appellant states:

This will help me to find out if all information is correct and if so great. If not then I can try to rectify the situation.

The appellant did not submit representations in this matter and has not elaborated on the basis for his belief that the information might be incorrect. In my view, in order to establish the relevance of this factor, a party must provide some basis for making such a claim. It is not sufficient simply to express a belief without some evidence to support it. In the absence of information on this issue I cannot conclude that this factor is relevant.

The Ministry has commented on the accuracy of information contained in these types of documents and the manner in which it deals with such information. Although these comments do not address whether the information at issue is inaccurate, they may assist the appellant in understanding how the information is used by the Ministry. In this regard, the Ministry states:

[T]he Family Responsibility Office will not take any steps to enforce a support order unless it has satisfied itself that it is enforcing against the correct individual. For example, if the Family Responsibility Office received information from the support recipient indicating that the support payor owns a car, the Family Responsibility Office will not pursue the seizure and sale of that car unless it is certain that the car does, in fact, belong to the support payor, and that it is not encumbered. Consequently, if the Family Responsibility Office has the wrong information, there is no risk that any other person will be prejudiced in any way.

The Ministry indicates further that a support payor may file a financial statement with the Family Responsibility Office outlining his or her current financial situation in order to assist this office to determine

the accuracy of the information on file. The Ministry notes, however, that most support payors are reluctant to provide the Director with the information which is set out in the filing package.

In my view, the Ministry's approach in dealing with the information recognizes that the document by its very nature may contain incorrect information. This is reflected in the steps it takes prior to enforcing a support order to verify information and thus mitigates any prejudice to a support payor resulting from inaccurate information. Consequently, even if I were satisfied that this factor is relevant in the circumstances of this appeal, which I am not, I would not be inclined to give it much weight.

I have considered the other factors in section 21(2) and find that none apply. However, in the circumstances of this appeal, the fact that the information is actually about the appellant is a relevant consideration. In this regard, I find that there is an inherent fairness issue in circumstances where one individual provides detailed personal information about another individual to a government body. In my view, this goes to the autonomy of the individual and his ability to control the dissemination and use of his own personal information, and is reflected in section 1(b) of the Act as one of the fundamental purposes of the Act. This section states:

The purposes of this Act are,

- (b) to protect the privacy of individuals with respect to personal information about themselves held by institutions and to provide individuals with a right of access to that information.

In determining what weight to give to this consideration, I refer back to my discussion about the reasons for the creation of the Family Responsibility Office in the first place and the nature of the support enforcement process. In my view, this process was designed to meet a serious social need and because of the reluctance of support payors to participate in its information gathering, the Family Responsibility Office has had to take other steps to facilitate its objectives which include obtaining personal information about the support payor from the support recipient. It is apparent, however, that this is a very controlled process with safeguards built into it to minimize any prejudice to the support payor while enabling the Director to fulfill her duties as required by the FRSAEA. In this context, I find that the weight to be given to the issues of fairness are significantly diminished.

In balancing the appellant's right to access to this information against the privacy rights of the affected person, I find that the factors in section 21(2)(f) and (h) outweigh the appellant's interests in disclosure.

I have considered the Ministry's exercise of discretion in this matter and find that it should not be disturbed. Therefore, the portions of the records at issue in this appeal are exempt under section 49(b) of the Act.

Because of these findings it is not necessary for me to consider the possible application of sections 14(1)(c) and 49(a) of the Act.

**ORDER:**

[IPC Order PO-1750/January 28, 2000]

I uphold the Ministry's decision.

Original signed by: \_\_\_\_\_  
Laurel Cropley  
Adjudicator

\_\_\_\_\_ January 28, 2000