



Information and Privacy  
Commissioner/Ontario

Commissaire à l'information  
et à la protection de la vie privée/Ontario

# ORDER PO-1801

Appeal PA-000017-1

Ministry of the Attorney General



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:**

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 access to:

. . . copies of all personal information pertaining to me in your custody. The request is for my personal information contained within any data bank, or any written file, to include any notes generated by any and all employees of the institution in the performance of their duties.

The appellant was the recipient of spousal and child support payments made by her former spouse (the affected person) through the Ministry's Family Responsibility Office (the FRO) pursuant to a court order.

The appellant also indicated that she was not seeking access to any personal information relating to "third parties" who are not Ministry employees. The Mediator assigned to the file by this office clarified with the appellant that she did not wish to exclude the personal information of her former spouse, however.

The Ministry located records responsive to the request and granted access to them, in part. Access to the remaining portions of the records was denied under section 21(1) of the Act (invasion of privacy), with reference to the presumptions against disclosure in sections 21(3)(d) (information relating to employment or educational history) and 21(3)(f) (information describing an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities or creditworthiness).

The appellant appealed the Ministry's decision to deny access to the undisclosed information and maintained that additional records responsive to her request should exist. Specifically, the appellant refers to several facsimile transmissions which she sent to the FRO regarding the suspension of her support payments. She submits that these documents, as well as any others which relate to the suspension, should have been made available to her.

The Ministry also advised the appellant that certain portions of Record 210 contained information which was not responsive to her request. During the mediation stage of the appeal, the appellant agreed that these portions of Record 210 were not responsive and they are no longer at issue in this appeal.

Because the Mediator determined that some of the records may contain the personal information of the appellant, the Mediator's Report provided to the parties also raised the possible application of section 49(b) to those records.

I provided a Notice of Inquiry to the Ministry and the affected person soliciting their representations on the issues in this appeal. I received submissions from both parties. With its agreement, the complete representations of the Ministry were shared with the appellant, along with a Notice of Inquiry which was modified following the receipt of the other parties' submissions. The appellant also submitted representations.

In her submissions, the appellant takes the position that throughout the processing of the request and the subsequent appeal, she has never sought access to any of the personal information of her former husband or any other individual. Accordingly, she now asserts that any such personal information contained in the records does not form part of this appeal. While this is contrary to what was clearly communicated to the Mediator prior to the Inquiry stage of the process, I will assume that this represents the current position of the appellant with respect to the scope of this appeal.

The records which were identified as being at issue at the time the Notice of Inquiry was prepared consisted of the following:

- the undisclosed portions of Records 35-40, 54, 64, 65, 67, 69, 71, 74, 76, 78, 80, 81, 84, 86, 87, 90-92, 94-97, 100-105, 121, 155, 158-161, 166-171, 174-177, 179, 180, 183, 189, 191, 192, 227, 233 and 235; and
- Records 50, 57, 59, 60, 106-110, 126, 156, 157, 163, 165, 174, 178, 181, 184, 186, 190, 193, 228, 230, 231, 236 and 237 in their entirety.

These records represent printouts of various computer-generated information, internal Ministry notes and correspondence relating to the payment of spousal and child support to the appellant through the FRO from the affected person. The list of records at issue following the appellant's narrowing of the scope of the appeal has been significantly reduced since the majority of the undisclosed portions of the records or the complete records relate to other identifiable individuals. I will first address the issue of "personal information" in my discussion below in order to determine whether any of the remaining information relates solely to the appellant or contains no personal information.

## **DISCUSSION:**

### **PERSONAL INFORMATION**

Section 2(1) of the Act defines the term "personal information" as follows:

"personal information" means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,

[IPC Order OP\_1801/July 7,2000]

- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except where they relate to another individual,
- (f) 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,
- (g) the views or opinions of another individual about the individual, and
- (h) 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;

The Ministry submits that Records 158 to 161, 166, 169, 170 to 172, 177, 180, 183, 185, 189 and 192, which are Affidavits of Service prepared by various Ministry staff, contain the personal information of each of the deponents named in them. This information consists of the deponent's name, along with the city and the regional municipality, municipality or province in which they reside. I note that the deponent's name in each of these documents was disclosed to the appellant, but not the name of the city or regional municipality, municipality or province. In my view, this information does not qualify as the personal information of these individuals for two reasons.

First, the information is not specific enough to be characterized as the address of the individual within the meaning of the definition in section 2(1)(d). I also find that it does not qualify under the definition in section 2(1)(h). Despite the fact that each individual deponent is named, reference to the city or municipality in which he or she lives does not qualify as personal information within the definition of that term in section 2(1).

Second, I note that each of the deponents to the Affidavits of Service is an employee of the Ministry. In my view, each individual was acting in his or her capacity as a Ministry employee and not in a personal capacity at the time the affidavits were sworn. The information deposed to simply describes an activity which they would have performed in the course of their duties as employees of the Ministry's FRO, or its predecessors. As such, I find that the information contained in these records which relates to the deponents of the affidavits does not qualify as their "personal information" within the meaning of section 2(1) on that basis.

Further, I note that the Affidavits of Service are on a Form 7, used by the Ontario Court (Provincial Division) and were filed with that Court by the FRO in furtherance of its enforcement of the court order against the support payor. Each of these documents are, therefore, publicly available in the file maintained by the Ontario Court (Provincial Division) which made the order being enforced by the FRO.

The Ministry submits that each record, or part of a record, at issue in this appeal contains the personal information of the affected person, who is the support payor pursuant to a court order which is enforced by the FRO. As noted above, the appellant has taken the position that she is not interested in obtaining access to any of the personal information of the affected person which may be contained in the records or portions of records at issue. I have reviewed each of the records or portions of records identified above as responsive to the request and make the following findings with respect to whether they contain the personal information of the affected person.

The undisclosed information in Records 35 to 40, 54, 64, 65, 67, 69, 71, 74, 76, 78, 80, 81, 84, 86, 87, 90, 91, 92, 94 to 97, 100 to 105, 167, 175, 176, 179, 191, 227, 233 and 235 refers to the affected person and his contacts with the FRO and its predecessors. The information includes his telephone number and address, case and account number, employer's name, address and telephone number and various computer entries relating to inquiries, contacts and other financial dealings between himself and the FRO. I find that this information qualifies as the personal information of the affected person under the definition in sections 2(1)(b), (c), (d) and (h). As the appellant is not seeking any of the personal information of the affected person, I find that the undisclosed portions of each of these records are outside the scope of the appellant's request.

Similarly, Records 50, 57, 59, 60, 106 to 110, 126, 156, 157, 163, 165, 174, 178, 181, 184, 186, 190, 193, 228, 230, 231, 236 and 237, which were withheld in their entirety, also deal with the affected person's many contacts with the FRO and its predecessors. These records also contain his telephone number and address (section 2(1)(d)), case and account number (section 2(1)(c)), employer's name, address and telephone number (section 2(1)(h)) and various financial transactions between the affected person and the FRO and its predecessors (section 2(1)(b)). Again, I find that the information contained in these records qualifies as the personal information of the affected person and that this information is, accordingly, outside the scope of the appellant's request.

Record 155 is a Writ of Seizure and Sale issued by the Ontario Court (Provincial Division). It contains the name and address of the affected person, thereby qualifying as his personal information within the definition of that term in section 2(1)(d). This record also refers to the appellant and she is named as the support payee. As such, I find that the information contained in Record 155 also qualifies as the personal information of the appellant, under section 2(1)(h).

Record 168 is a letter from a predecessor of the FRO to the Sheriff of a municipality. The Ministry has severed the address of the Municipality on the basis that this information is personal information. I cannot agree. The official to whom the correspondence was addressed was not named personally and the letter

instructs him/her to withdraw a Writ of Seizure and Sale filed in his/her office. In my view, the undisclosed information from Record 168 does not qualify as personal information within the meaning of section 2(1). As the invasion of privacy exemptions in sections 21(1) and 49(b) can only apply to personal information, I find that Record 168 is not exempt under either of those exemptions. Because no other exemptions have been claimed for this information and I find that no mandatory exemptions apply to it, I will order that it be disclosed to the appellant.

The undisclosed portion of Record 121 consists of the address of the affected person which was included in an Order of the Ontario Court (Provincial Division) and marked as entered on May 17, 1998. The Order also indicates that a complete copy of Record 121 was provided to the appellant. Record 121 contains the personal information of both the appellant and the affected party under section 2(1)(d) as it includes their addresses.

The affected person's name and address, and in some cases his employer's name and address, also appear in Records 158, 159, 160, 161, 166, 169, 170, 171, 172, 177, 180, 183, 185, 189 and 192, which are the Affidavits of Service referred to in my discussion above. I find that each of these records also contain the personal information of the appellant as they refer to her by name and include other personal information about her, such as her address, thereby qualifying under section 2(1)(d) and (h) as her personal information, in addition to the affected person.

By way of summary, I find that Records 121, 155, 158, 159, 160, 161, 166, 169, 170, 171, 172, 177, 180, 183, 185, 189 and 192 contain the personal information of the appellant and the affected person within the definition of that term in section 2(1). I will address the application of section 49(b) to this information below.

## **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 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) 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 Ontario Court of Justice (General Division) (Divisional Court) determined in the case of John Doe v. Ontario (Information and Privacy Commissioner) (1993), 13 O.R. (3d) 767 that 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) or where a finding is made under section 23 of the Act that there is a compelling public interest in disclosure of the information which clearly outweighs the purpose of the section 21 exemption.

As noted above, the sole records, or parts of records, remaining at issue consist of the Affidavits of Service (Records 158, 159, 160, 161, 166, 169, 170, 171, 172, 177, 180, 183, 185, 189 and 192), Writ of Seizure and Sale (Record 155) and a Court Order (Record 121), all of which can be found in the court file maintained by the Ontario Court (Provincial Division). Balancing the appellant's right of access to this information against the affected person's right to privacy, I find that the disclosure of the information contained in these records could not be said to be an unjustified invasion of the personal privacy of the affected person under section 49(b). The information is available to anyone, including the appellant, in the file maintained by the Ontario Court (Provincial Division). As was clearly the case with the Court Order and the Writ of Seizure and Sale, it would appear that the Affidavits were actually copied to the appellant in some instances.

Accordingly, I find that Records 121, 155, 158, 159, 160, 161, 166, 169, 170, 171, 172, 177, 180, 183, 185, 189 and 192 are not exempt under section 49(b). As no other exemptions have been claimed for these records, and no mandatory exemptions apply to them, I will order that they be disclosed to the appellant.

## **REASONABLENESS OF SEARCH**

The appellant maintains that the records identified by the Ministry as responsive to her request are incomplete. Specifically, she argues that at least three pieces of correspondence which she forwarded to the Ministry by facsimile in November 1999, along with any supporting documentation prepared by their recipients, were not included in the material which she was given access to.

I note that the appellant's request was made on September 19, 1999. The request was for information maintained by the Ministry's FRO to that date. The request did not specify that it was to include any material generated after that date. Some of the records, or parts of records, from the FRO's database, which I have found above to be not responsive to the request because they relate only to the affected person, were created in November 1999. It would appear that this information addresses the affected person's reaction to issues surrounding the payment of support raised by the appellant. Because these records post-date the date of the request, they would not necessarily be responsive to the request, although the Ministry treated them as such.

The Ministry has provided me with detailed submissions concerning the nature and extent of the search which it undertook for the responsive records. The paper file maintained by the FRO, as well as its databases relating to the appellant, were located and copies were made of their contents. Again, I must reiterate that much of the information compiled in the appellant's FRO files relates to the affected party and

issues surrounding the payment of monies by this individual, rather than the appellant. A large percentage of the information in these files is the personal information of the affected person and as such, is not responsive to the appellant's request, as clarified.

In my view the Ministry has provided me with sufficient detail to enable me to find that its search was reasonable. I further find that the appellant has not provided me with a sufficient basis for finding that the searches undertaken by the Ministry for records responsive to her request were not reasonable. Accordingly, I dismiss that portion of the appeal.

**ORDER:**

1. I order the Ministry to provide the appellant with copies of Records 121, 155, 158, 159, 160, 161, 166, 168, 169, 170, 171, 172, 177, 180, 183, 185, 189 and 192 by **August 11, 2000**, but not before **August 7, 2000**.
2. I find that the Ministry's search for records responsive to the request was reasonable and I dismiss that portion of the appeal.
3. In order to verify compliance with the terms of Provision 1, I reserve the right to require the Ministry to provide me with a copy of the material which is disclosed to the appellant.
4. I uphold the Ministry's decision to deny access to the remaining records or parts of records.

Original signed by: \_\_\_\_\_  
Donald Hale  
Adjudicator

\_\_\_\_\_  
July 7, 2000