



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

# **ORDER PO-2493**

**Appeal PA-050237-1**

**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*) for access to:

...copies of all 3<sup>rd</sup> party information contained in my own file at the [Ontario Disability Support Program] O.D.S.P. office in Lindsay. . .

The Ministry located a one-page letter from an individual that was responsive to the request. The Ministry denied access to the record, in its entirety, under the discretionary exemption in section 49(b) of the *Act* (invasion of privacy).

The requester, now the appellant, appealed the City's decision.

During mediation, the Ministry clarified that it is relying on the consideration listed in section 21(2)(f) and the presumptions in sections 21(3)(c) and 21(3)(g) of the *Act* in support of its section 49(b) claim.

As further mediation was not possible the file was forwarded to the adjudication stage of the appeal process.

To begin the adjudication this office sent a Notice of Inquiry to the Ministry inviting it to provide representations. The Ministry did so. This office then sent the Notice of Inquiry to the appellant, along with a complete copy of the Ministry's representations. The appellant did not respond to the Notice of Inquiry which was sent to him. The appeal was later transferred to me to complete the inquiry.

## **RECORDS:**

The sole record at issue is a one-page letter.

## **DISCUSSION:**

### **PERSONAL INFORMATION**

In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains "personal information" and, if so, to whom it relates. That term is defined in section 2(1) 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,
- (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 if 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 list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information [Order 11].

To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual [Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F, PO-2225].

To qualify as personal information, it also must be reasonable to expect that an individual may be identified if the information is disclosed [Order PO-1880, upheld on judicial review in Ontario (Attorney General) v. Pascoe, [2002] O.J. No. 4300 (C.A.)].

The Ministry submits that the record contains the personal views of another individual about the appellant and reveals information about social services eligibility, including the name and address of the other individual.

Having reviewed the record, I find that it contains the “personal information” of identifiable individuals other than the appellant. In particular, this includes their family status and sex (paragraph (a)), address and telephone number (paragraph (d)) and the personal opinions or views of an identifiable individual (paragraph (e)). In addition, I find that the record represents correspondence sent to an institution by an individual that is implicitly or explicitly of a private or confidential nature (paragraph (f)). The record also contains the other individuals’ names along with other personal information relating to them (paragraph (h)).

As well, the record contains the personal information of the appellant, including his family status (paragraph (a)), the views or opinions of another individual about the appellant (paragraph (g)) and his name which appears with other personal information relating to him (paragraph (h)).

### **INVASION OF PRIVACY**

Section 47(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 49 provides a number of exemptions from this right.

Section 49(b) of the *Act* provides that:

A head may refuse to disclose to the individual to whom the information relates personal information where the disclosure would constitute an unjustified invasion of another individual’s personal privacy.

In this case the record contains both the information of the appellant and that of other identifiable individuals. The appellant’s personal information can be severed from that of the other individuals. As disclosure of the appellant’s personal information to him cannot be an unjustified invasion of another individual’s personal privacy, it cannot be exempt under section 49(b). Since no other exemptions have been claimed, I will order the appellant’s own personal information to be disclosed to him. I will consider the application of section 49(b) as to the disclosure of the other identifiable individuals’ personal information in the record to the appellant.

If the remaining portions of the record fall within the scope of section 49(b), that does not end the matter. Despite this finding, the institution may exercise its discretion to disclose the information to the requester. This involves a weighing of the requester’s right of access to his or her own personal information against the other individual’s right to protection of their privacy.

Sections 21(1) to (4) provide guidance in determining whether the unjustified invasion of personal privacy threshold under section 49(b) is met.

If any of paragraphs (a) to (h) of section 21(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 49(b). Once established, a presumed unjustified invasion of personal privacy under section 21(3) can only be overcome if

section 21(4) or the “public interest override” at section 23 applies. [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767].

The Ministry relies on the mandatory exemptions listed in sections 21(3)(c) (eligibility for social services) and 21(3)(g) (personal recommendations) of the *Act*. In its representations, the Ministry submits that:

...the record in question contains the personal views of the third party. In addition, the record reveals information about social services eligibility, including the name and address of the third party...

The record at issue in this appeal, clearly falls under this exemption.

Section 21(3)(c) and (g) provide that:

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

- (c) relates to eligibility for social service or welfare benefits or to the determination of benefit levels.
- (g) consists of personal recommendations or evaluations, character references or personnel evaluations.

The personal information in this case relates to eligibility for social service or welfare benefits or to the determination of benefit levels of identifiable individuals other than the appellant, and I find that Section 21(3)(c) applies. Section 21(3)(g) does not apply to this information. Because Section 21(3)(c) applies, disclosure is presumed to constitute an unjustified invasion of these individuals' privacy. Subject to my discussion of Absurd Result below, the personal information of the identifiable individuals other than the appellant qualifies for exemption under section 49(b).

### **ABSURD RESULT**

Several orders (M-613, M-847, M-1077 and P-1263, for example) have found that non-disclosure of personal information which was originally provided to the institution by an appellant, or personal information of other individuals which would clearly have been known to an appellant, would contradict one of the primary purposes of the *Act*, which is to allow individuals to have access to records containing their own personal information unless there is a compelling reason for non-disclosure.

Where the requester originally supplied the information or the requester is otherwise aware of it, the information may be found not exempt under section 49(b), because to find otherwise would be absurd and inconsistent with the purpose of the exemption [Orders M-444, MO-1323].

It would be absurd to not disclose the information in the record concerning a court order that the appellant was a party to. Disclosure of this information would not be inconsistent with the purpose of the exemption. I find that this information is not exempt under section 49(b).

### **EXERCISE OF DISCRETION**

The section 49(b) exemption is discretionary, and permits an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

In addition, the Commissioner may find that the institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose
- it takes into account irrelevant considerations
- it fails to take into account relevant considerations

In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations [Order MO-1573]. This office may not, however, substitute its own discretion for that of the institution [section 54(2)].

Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant [Orders P-344, MO-1573]:

- the purposes of the *Act*, including the principles that
  - information should be available to the public
  - individuals should have a right of access to their own personal information
  - exemptions from the right of access should be limited and specific
  - the privacy of individuals should be protected
- the wording of the exemption and the interests it seeks to protect
- whether the requester is seeking his or her own personal information

- whether the requester has a sympathetic or compelling need to receive the information
- whether the requester is an individual or an organization
- the relationship between the requester and any affected persons
- whether disclosure will increase public confidence in the operation of the institution
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person
- the age of the information
- the historic practice of the institution with respect to similar information.

The Ministry in exercising its discretion has considered not only the presumptions listed above in section 21(3)(c) and (g) but has also considered the circumstances listed in section 21(2)(f).

Section 21(2)(f) states that 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, the personal information is highly sensitive.

In particular, the Ministry states:

In the record, the third party provides information which may affect the appellant financially and if released could cause excessive personal distress to the third party.

In Order P-1625, Adjudicator Donald Hale states:

I have reviewed the submissions of the parties and the record itself and have come to the following conclusions:

1. The information contained in the record may properly be characterized as highly sensitive, within the meaning of section 21(2)(f). I find that the statements contained in the record are highly sensitive in nature as they relate directly to the affected persons' view of what is clearly a difficult situation between the appellant and themselves.

In making its decision the Ministry indicates that it also considered that the record contains the personal information of more than one individual, including that of a child.

In denying access to the personal information of the identifiable individuals other than the appellant in the record, for which I have upheld the Ministry's decision to do so, I find that the Ministry exercised its discretion under section 49(b) in a proper manner, taking relevant factors into account and not irrelevant ones.

**ORDER:**

1. I uphold the Ministry's decision to deny access to the portions of the record containing the personal information of identifiable individuals other than the appellant, not already known to the appellant.
2. I order the Ministry to disclose to the appellant those portions of the record that contain his personal information and information already known to him by no later than **September 11, 2006**, but not before **September 6, 2006**. For clarity, I have provided the Ministry with a highlighted version of the records identifying the portions that should *not* be disclosed.
3. In order to verify compliance with this order I reserve the right to require the Ministry to provide me with a copy of the records disclosed to the appellant pursuant to Provision 2, upon my request.

Original signed by \_\_\_\_\_  
Diane Smith  
Adjudicator

\_\_\_\_\_  
August 3, 2006