



**Information and Privacy  
Commissioner/Ontario**

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

# **INTERIM ORDER PO-2636-I**

**Appeal PA07-39**

**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*) concerning the Ontario Disability Support Program (ODSP). The ODSP is a program that is managed and delivered by the Ministry and provides people with disabilities who are in financial need, or who want and are able to work, with income and employment support.

The requester submitted a detailed request letter. The letter stated in part:

I am requesting the record of every expenditure charged to the public purse for the past five years for [three named ODSP employees]; room charges, meal charges, travel expenses while they were traveling on official business. Please include the names of all hotels and restaurants...

I am therefore requesting information on the number of people that actually stayed at Catholic Convents while undergoing out of town medical appointments. Interestingly our research team: "Stop The Abuse Against ODSP Recipients" has discovered ODSP has spent a great sum of money especially in [name of city] to train their staff in the prevention of suicide... I am therefore requesting information regarding the full accounting of the program. Travel expenses, salaries while on the training program and the ongoing administrative costs of the program for the last two years...

I therefore would like the data for frequency and amounts of overpayments made to ODSP recipients [in the ODSP South West Region] for the last five years. In other words what is the total amount of ODSP recipients in the system and how many of them have received significant overpayments of a least \$500 or more. Also, I trust someone is keeping track if the overpayments are a function of mistakes at the administrative level or a result of information supplied by the recipients themselves.

The Ministry located responsive records relating to the travel/expense claims of the three named ODSP employees and issued a decision denying access to these records in accordance with the discretionary exemption in section 20 (danger to safety or health) of the *Act*. In addition, the Ministry advised that the records related to the other portions of the request did not exist.

The requester, now the appellant, appealed that decision.

During the mediation process the Ministry issued a revised decision letter releasing portions of the records related to travel expenses. The Ministry withheld the portions of the records that contained the personal information of the three employees, claiming the mandatory exemption in section 21 (personal privacy) of the *Act*. The Ministry also denied access to the exact dates that the expenses were incurred and the names of hotels and restaurants contained in the records in accordance with section 20.

In addition, during the mediation process the appellant advised he wished to appeal on the basis that the Ministry did not conduct a reasonable search for responsive records. He believes that information on the following issues should exist:

- the number of people that actually stayed at Catholic Convents while undergoing out of town medical appointments;
- suicide statistics for ODSP recipients and information about suicide training for staff; and,
- information about the frequency and amounts of overpayments over \$500 made to ODSP recipients in the ODSP South West Region for the last five years.

As mediation did not resolve the issues in this appeal, the file was transferred to me to conduct an inquiry. I sent a Notice of Inquiry, setting out the facts and issues in this appeal, to the Ministry and the three ODSP employees (the affected persons) whose personal information may be contained in the records. I received representations from the Ministry and the affected persons. I sent a copy of the Ministry's representations to the appellant, along with a Notice of Inquiry, seeking the appellant's representations. I did not provide the appellant with a copy of the affected persons' representations due to my concerns about their confidentiality. I received representations from the appellant. In his representations, the appellant withdrew his request for records relating to information concerning suicide statistics for ODSP recipients.

## **RECORDS:**

The records at issue are the Statement of Travelling/General Expense claim forms for three named ODSP employees [the affected persons].

## **DISCUSSION:**

### **PERSONAL INFORMATION**

In order to determine which sections of the *Act* may apply, it is necessary for me to decide whether the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate. The Ministry relies on the following paragraphs of the definition:

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

- (c) any identifying number, symbol or other particular assigned to the individual,

- (d) the address, telephone number, fingerprints or blood type of 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].

Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual [Orders P-1409, R-980015, PO-2225].

To qualify as personal information, it 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 records contain the personal information of three identified Ministry employees [the affected persons]... The information at issue relates to the[se] employees in a personal capacity and not to their professional, official or business capacity.

The affected persons agree with the Ministry that the records contain their personal information. The appellant did not provide direct representations on this issue.

Upon review of the records, I note that the records do not contain the personal information of the appellant. The only personal information at issue in the records is the home addresses, home telephone numbers, social insurance numbers and employee numbers of the affected persons. I find that this information relates to the affected persons in their personal capacity and qualifies as their personal information in accordance with paragraphs (c) and (d) of the definition of “personal information” in section 2(1) of the *Act*.

## **PERSONAL PRIVACY**

I will now determine whether the mandatory exemption at section 21(1) applies to the information at issue.

Where a requester seeks personal information of another individual, section 21(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 21(1) applies.

If the information fits within any of paragraphs (a) to (f) of section 21(1), it is not exempt from disclosure under section 21.

In the circumstances, it appears that the only exception that could apply is paragraph (f), which reads:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

if the disclosure does not constitute an unjustified invasion of personal privacy.

The factors and presumptions in sections 21(2), (3) and (4) help in determining whether disclosure would or would not be an unjustified invasion of personal privacy under section 21(1)(f). Section 21(3) identifies certain types of information, the disclosure of which is presumed to constitute an unjustified invasion of personal privacy. Section 21(4) identifies information whose disclosure is not an unjustified invasion of personal privacy.

In the present appeal, none of the presumptions in section 21(3) are relied upon by the Ministry and I find that none apply to the personal information at issue. Similarly, section 21(4) is inapplicable in this appeal.

Section 21(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy [Order P-239]. The list of factors under section 21(2) is not exhaustive. The institution must also consider any circumstances that are relevant, even if they are not listed under section 21(2) [Order P-99].

The Ministry relies on the factor in paragraph (f) of section 21(2), which reads:

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 submits that:

The information is considered to be a presumed invasion of personal privacy as the information is highly sensitive and the individuals have not consented to the disclosure of their personal information.

The affected persons agree with and adopt the Ministry's representations on this issue. The appellant did not provide representations on this issue.

### **Analysis/Findings**

To be considered highly sensitive, it must be found that disclosure of the information could reasonably be expected to cause significant personal distress to the subject individual [Order PO-2518].

I agree with the findings of Adjudicator Laurel Cropley in Order M-1146, concerning the privacy interests at stake in disclosure of an individual's home address:

I have considered the rationale for protecting the address of an individual. One of the fundamental purposes of the *Act* is to protect the privacy of individuals with respect to personal information about themselves held by institutions (section 1(b)).

In my view, there are significant privacy concerns which result from disclosure of an individual's name and address. Together, they provide sufficient information to enable a requester to identify and locate the individual, whether that person wants to be located or not. This, in turn, may have serious consequences for an individual's control of his or her own life, as well as his or her personal safety. This potential result of disclosure, in my view, weighs heavily in favour of privacy protection under the *Act*.

This is not to say that this kind of information should never be disclosed under the *Act*. However, before a decision is made to disclose an individual's name and address together to a requester, there must, in my view, exist cogent factors or circumstances to shift the balance in favour of disclosure.

I also adopt this analysis concerning the affected persons' home telephone numbers. With the availability of reverse telephone number directories, the affected persons' names combined with their home telephone numbers provide sufficient information to enable a requester to identify and locate these individuals.

Taking into consideration the representations of the Ministry and the confidential submissions of the affected persons, I find that the affected persons' home addresses and telephone numbers are highly sensitive in the circumstances and the factor in section 21(2)(f) weighs heavily in favour of non-disclosure. Disclosure of this information could reasonably be expected to cause significant personal distress to the affected persons.

Similarly, I also find that the factor in section 21(2)(f) weighs heavily in favour of the non-disclosure of the employee and social insurance numbers of the affected persons. These numbers

are associated with highly sensitive and confidential employment and financial personal information of the affected persons.

In the absence of any relevant factors in favour of disclosure of the personal information at issue, I conclude that disclosure of the personal information in the records would constitute an unjustified invasion of personal privacy of the affected persons under section 21(1). As the requirements of the exception in section 21(1)(f) have not been established, I find that the undisclosed personal information is exempt under section 21(1).

### **THREAT TO SAFETY OR HEALTH**

I will now consider whether the discretionary exemption at section 20 applies to the information at issue, which consists of the names of hotels and restaurants frequented by the affected persons and the exact dates on which the expenses were incurred.

Section 20 states:

A head may refuse to disclose a record where the disclosure could reasonably be expected to seriously threaten the safety or health of an individual.

For this exemption to apply, the institution must demonstrate that disclosure of the record “could reasonably be expected to” lead to the specified result. To meet this test, the institution must provide evidence to establish a reasonable basis for believing that endangerment will result from disclosure. In other words, the institution must demonstrate that the reasons for resisting disclosure are not frivolous or exaggerated [*Ontario (Information and Privacy Commissioner, Inquiry Officer) v. Ontario (Minister of Labour, Office of the Worker Advisor)* (1999), 46 O.R. (3d) 395 (C.A.)].

An individual’s subjective fear, while relevant, may not be sufficient to establish the application of the exemption [Order PO-2003].

The term “individual” is not necessarily confined to a particular identified individual, and may include any member of an identifiable group or organization [Order PO-1817-R].

The Ministry submits that:

[It] has determined that there is a reasonable basis for concluding that disclosure could reasonably be expected to endanger the life or physical safety of a person. The Ministry's position is that to release the names of hotels and restaurants frequented by the [affected persons] and the exact dates on which the[se] individuals travelled could lead the [appellant] to figure out when/or where a particular Ministry employee might be located. This information could lead the appellant to know an opportune time to confront any one of the [affected persons] that he finds responsible for this “campaign” against his family.

The affected persons provided confidential representations on this issue.

The appellant in a number of letters has written to various government officials alleging corruption at the ODSP. He believes that disclosure of the information at issue will reveal irregularities in the expense claims forms submitted by the affected persons for reimbursement of travel and general expenses.

### **Analysis/Findings**

In reviewing this exemption claim, the question to be asked is whether the Ministry has demonstrated that disclosure of the information at issue “could reasonably be expected to” lead to the specified result, i.e. endangerment of affected persons.

Past orders of this office relating to this exemption have emphasized the need to consider both type of information at issue and the behaviour of the individual who is requesting the information. The lead authority on this exemption is a case of the Ontario Court of Appeal: *Big Canoe v. Ontario* (1999), 46 O.R. (3d) 395 (C.A.) (*Big Canoe*). In *Big Canoe*, the Court refers to consideration of the quality of the information contained in the record and, more specifically, any “potentially inflammatory” character. In considering the perceived risk of threat from the appellant under this exemption, the Court in *Big Canoe* expressed the importance of establishing an evidentiary foundation for assertions of threatening behaviour by an appellant. For section 20 to apply, the expectation of harm must be reasonable, but need not be probable. [Orders MO-2209, PO-2606].

It has been acknowledged by this office that individuals working in public positions will occasionally have to deal with “difficult” individuals. In a postscript to Order PO-1939, Adjudicator Laurel Cropley stated the following with regard to section 20 of the *Act*:

In these cases, individuals are often angry and frustrated, are perhaps inclined to using injudicious language, to raise their voices and even to use apparently aggressive body language and gestures. In my view, simply exhibiting inappropriate behaviour in his or her dealings with staff in these offices is not sufficient to engage a section 20... claim. Rather ...there must be clear and direct evidence that the behaviour in question is tied to the records at issue in a particular case such that a reasonable expectation of harm is established should the records be disclosed.

I agree with Adjudicator Cropley’s comments. In the circumstances of the present appeal, I do not accept that the evidence tendered by the Ministry and the affected persons as to the appellant’s behaviour meets the required threshold for exemption under section 20. In particular, the Ministry and the affected persons have not provided clear and direct evidence that the behaviour of the appellant is tied to the records at issue such that a reasonable expectation of harm is established should the undisclosed information at issue in the records be disclosed.



In addition, I do not find that the information at issue reveals the travel patterns of the affected persons such that the appellant could figure out when and/or where an affected person might be located. Therefore, I also find that the Ministry and the affected persons have not demonstrated that there is a reasonable basis for believing that endangerment could reasonably be expected to result from disclosure of the information at issue in the records.

Accordingly, I find that the names of hotels and restaurants and the exact dates on which expenses were incurred by the affected persons cannot be withheld under section 20 and I will order them disclosed.

### **SEARCH FOR RESPONSIVE RECORDS**

I will now determine whether the Ministry conducted a reasonable search for records.

Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 24 [Orders P-85, P-221, PO-1954-I]. If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records [Order P-624].

Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.

The Ministry was asked to provide a written summary of all steps taken in response to the request. In particular, the Ministry was asked to respond to the following preferably in affidavit form:

1. Did the Ministry contact the requester for additional clarification of the request? If so, please provide details including a summary of any further information the requester provided.
2. If the Ministry did not contact the requester to clarify the request, did it:
  - (a) choose to respond literally to the request?
  - (b) choose to define the scope of the request unilaterally? If so, did the Ministry outline the limits of the scope of the request to the requester? If yes, for what reasons was the scope of the request defined this way? When and how did

the Ministry inform the requester of this decision? Did the Ministry explain to the requester why it was narrowing the scope of the request?

3. Please provide details of any searches carried out including: by whom were they conducted, what places were searched, who was contacted in the course of the search, what types of files were searched and finally, what were the results of the searches? Please include details of any searches carried out to respond to the request.
4. Is it possible that such records existed but no longer exist? If so please provide details of when such records were destroyed including information about record maintenance policies and practices such as evidence of retention schedules.

The appellant believes that additional records should exist for the following items:

1. the number of people that actually stayed at Catholic Convents while undergoing out of town medical appointments;
2. information about suicide training for staff; and,
3. information about the frequency and amounts of overpayments over \$500 made to ODSP recipients in the ODSP South West Region for the last five years.

I will deal with each of these items separately.

**1. The number of people that stayed at Catholic Convents while undergoing out of town medical appointments**

The Ministry submits that it has in place a Directive that sets out the requirements for verification of, among other things, receipts for accommodation while attending a medical appointment as well as a policy on out of town travel. If an ODSP recipient needed to arrange overnight accommodation for a medical appointment, receipts need only be verified and a photocopy of the receipt is not required to be kept on file.

Therefore, the Ministry submits that responsive records do not exist as it is not a requirement that a receipt be retained by the Ministry for out of town accommodation for medical appointments.

The appellant submits that there must be a policy concerning the advising ODSP recipients of the option of staying at a Catholic Convent while undergoing out of town medical appointments. However, the appellant did not seek a copy of this policy in his request. He will have to file another request if he wishes to obtain access to this policy.

I find that the appellant has not provided a reasonable basis for concluding that records exist concerning the number of people that stayed at a Catholic Convent while undergoing out of town medical appointments. I find the Ministry has provided sufficient evidence to show that it has made a reasonable effort to identify and locate these responsive records. Accordingly, I find the Ministry's search to be reasonable in the circumstances.

## **2. Information about suicide training for staff**

The Ministry submits that it does not provide training to staff specific to suicide prevention. Each office of the Ministry has a Health and Safety Committee or a Health and Safety Representative. Specific issues around client and staff safety and the need to orient and train generally, on topics such as, fire and emergency safety plans, suspicious mail protocols, infectious disease control, are included in staff orientation materials.

The appellant did not provide submissions on this issue.

I find that the appellant has not provided a reasonable basis for concluding that records exist concerning the suicide training for staff. I find the Ministry has provided sufficient evidence to show that it has made a reasonable effort to identify and locate these responsive records. Accordingly, I find the Ministry's search to be reasonable in the circumstances

## **3. Information about the frequency and amounts of overpayments over \$500 made to ODSP recipients in the ODSP South West Region for the last five years**

The Ministry states that an overpayment to ODSP recipient occurs when a person receives a benefit that he or she is not entitled to receive. It submits that it does not collect information as to whether or not an overpayment is the result of an administrative error and as such no record exists. All overpayments are subject to recovery, except under exceptional circumstances.

The appellant submits that there must be responsive records as the Ministry would not be able to collect overpayments if records of these overpayments did not exist. He provided a copy of a chart entitled "Overpayment and Arrear Calculation Sheet".

I find that the Ministry has not provided sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records concerning the frequency and amounts of overpayments over \$500 made to ODSP recipients. It has not provided me with details of any searches that it has undertaken for these records. The appellant did not ask for overpayments that resulted only from administrative errors. He asked for any overpayments over \$500. Therefore, I find that the Ministry has not conducted a reasonable search for records of overpayments over \$500 as required by section 24 of the *Act*. Accordingly, I will order the Ministry to conduct a search for records containing information concerning the frequency and

amounts of overpayments over \$500 made to ODSP recipients in the ODSP South West Region for the five year period preceding the appellant's request.

**ORDER:**

1. I order the Ministry to disclose the names of hotels and restaurants and the exact dates on which expenses were incurred by the affected persons in the records by **February 25, 2008 but not before February 19, 2008**.
2. I uphold the Ministry's decision to deny access to the personal information in the records that I have found to be exempt under section 21(1).
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 sent to the appellant in accordance with paragraph 1.
4. I order the Ministry to conduct a new search for records containing information concerning the frequency and amounts of overpayments over \$500 made to ODSP recipients in the ODSP South West Region for the five year period preceding the appellant's request. I order the Ministry to provide me with an affidavit sworn by the individual(s) who conducted the search, confirming the nature and extent of the search conducted for the responsive records within 30 days of this interim order. At a minimum the affidavit should include information relating to the following:
  - (a) information about the employees swearing the affidavit describing his or her qualifications and responsibilities;
  - (b) the date(s) the person conducted the search and the names and positions of any individuals who were consulted;
  - (c) information about the type of files searched, the search terms used, the nature and location of the search and the steps taken in conducting the search; and,
  - (d) the results of the search.
5. The affidavit referred to above should be sent to my attention, c/o Information and Privacy Commissioner/Ontario, 2 Bloor Street East, Suite 1400, Toronto, Ontario, M4W 1A8. The affidavit provided to me may be shared with the appellant, unless there is an overriding confidentiality concern. The procedure for the submitting and sharing of representations is set out in IPC Practice Direction 7.

6. If, as a result of the further search, the Ministry identifies any additional records responsive to the request, I order the Ministry to provide a decision letter to the appellant regarding access to these records in accordance with the provisions of the *Act*, considering the date of this Order as the date of the request.
7. I uphold the remainder of the Ministry's search.
8. I remain seized of this appeal in order to deal with any outstanding issues regarding the search for records arising from this appeal.

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Diane Smith  
Adjudicator

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January 18, 2008