

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER PO-3056

Appeal PA11-243

Legal Aid Ontario

February 24, 2012

**Summary:** The appellant requested access to the names and background information of three Area Committee members who refused his legal aid application. He also alleged that the Freedom of Information coordinator for Legal Aid Ontario was in a conflict of interest with respect to the appeal. The names of the Area Committee members who decided the appellant's legal aid application and the business contact information of one of the three are found to be professional, not personal information. The home address of the other two Area Committee members is held to be their personal information. The personal information of the three Area Committee members qualifies for exemption under section 21(1) of the *Act*. The names of the three Area Committee members and the business contact information of one of the three Area Committee members qualify for exemption under sections 20 and 49(a) of the *Act*. However, two of the records at issue can be disclosed in a severed form, without revealing exempt information. The Freedom of Information coordinator is not in a conflict of interest with respect to the request or this appeal.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, ss. 2(1), 2(3), 2(4), 10(2), 20, 21(1), 21(3)(d), 21(3)(h), 49(a) and 49(b).

**Orders and Investigation Reports Considered:** MO-1285 and PO-1940.

## OVERVIEW:

[1] The appellant submitted a multi-part request to Legal Aid Ontario (LAO) under the *Freedom of Information and Protection of Privacy Act* (the *Act* or *FIPPA*) for access to information relating to his refused application for Legal Aid funding.

[2] LAO identified responsive records and issued a decision letter in which it granted access to the requested information except for the names and "background information" pertaining to Area Committee members, including those who had considered the requester's Legal Aid appeal. LAO relied on section 20 (danger to safety or health) of the *Act* to withhold this information.

[3] The requester (now the appellant) appealed the decision. In the Appeal Form, the appellant clarifies that "information relating to names of all people who were involved (handled my LAO file or made decisions regarding my file) should be disclosed to me".

[4] After mediation, only the following issues remained:

- whether the names and background information pertaining to the Area Committee members who handled the appellant's LAO file or made decisions regarding his file, qualify for exemption under section 20 of the *Act*
- whether the Freedom of Information coordinator at LAO is in a conflict of interest with respect to this appeal

[5] As mediation did not resolve the appeal, it was moved to the adjudication stage of the appeals process where an adjudicator conducts an inquiry under the *Act*.

[6] I commenced the inquiry by seeking representations from LAO and three individuals who may be affected by disclosure of the requested information (the affected parties) on the facts and issues set out in a Notice of Inquiry. Although the LAO only claimed the application of section 20 of the *Act*, based on my review of the records at issue, I decided to add the possible application of sections 21(1) (personal privacy) and 49(a) (in conjunction with section 20 of the *Act*) as issues in the appeal. LAO provided responding representations. As set out in an affidavit included with its representations, two of the three notified affected parties advised LAO that they objected to disclosure of the requested information. The third provided no response either to LAO or this office.

[7] I then sent a Notice of Inquiry to the appellant seeking representations on the facts and issues set out in a Notice of Inquiry as well as LAO's non-confidential representations. The appellant decided not to file responding representations.

[8] In the discussion that follows, I reach the following conclusions:

- I uphold LAO's decision that the personal information of the three Area Committee members who refused the appellant's legal aid application, qualify for exemption under section 21(1) of the *Act*.
- I find that the names of the three Area Committee members and the business contact information of one of the three Area Committee members qualify for exemption under sections 20 and/or 49(a) (in conjunction with section 20) of the *Act*, as the case may be.
- two of the records at issue can be released in a severed form.
- I find that the Freedom of Information coordinator is not in a conflict of interest with respect to the request or this appeal.

## **RECORDS:**

[9] The Records under consideration in this appeal are an Area Committee Decision Record, a list of Appointments to the GTA District Area Committee, a Checklist for two Area Committee applicants, resume cover letters for two Area Committee applicants and resumes for three Area Committee applicants.

## **ISSUES:**

- A. Is the Freedom of Information (FOI) Coordinator at LAO in a conflict of interest with respect to this appeal?
- B. Do the records contain personal information?
- C. Is the personal information in the records exempt under sections 21(1) or 49(b)?
- D. Do sections 20 or 49(a) (in conjunction with section 20) apply to information in the records?
- E. Can the records be reasonably severed without revealing exempt information?
- F. Has the LAO appropriately exercised its discretion?

## **DISCUSSION:**

### **A. Is the Freedom of Information Coordinator at LAO in a Conflict of Interest with respect to this Appeal?**

[10] The appellant took the position that that the Freedom of Information (FOI) coordinator at LAO is in a conflict of interest with respect to this appeal. He alleged that this is because this individual was also Director of Appeals at LAO and had upheld the Area Committee's decision to not grant a legal aid certificate to the appellant based on financial ineligibility.

[11] LAO makes extensive submissions on this issue and refers to a number of legal authorities to support its position that there are no grounds for the appellant's allegation. It submits that:

The basis of the allegation of the requester that the FOI Coordinator is in a conflict of interest appears to be the concurrent role of the FOI Coordinator in relation to determining certificate appeals and in particular, her having previously decided in the requester's appeal of the decision of the Area Committee that [it] was appropriate to uphold the decision of the Area Committee and refuse a legal aid certificate.

[12] LAO further states that the FOI coordinator's response to the request for records was a function that was independent of the duties performed by the Director, Appeals and could be discharged "without a reasonable apprehension of bias regardless of the earlier dealings with the requester qua-legal aid applicant/appellant".

[13] It concludes its submissions by stating:

... in light of the functions of the *FIPPA* Coordinator, which do not involve any adjudicative function, and the absence of specific information about a basis for a conflict of interest, there is no basis for a conclusion that there is a conflict of interest on the part of the *FIPPA* Coordinator in respect of this access to information request.

[14] The appellant provided no responding representations to challenge LAO's position.

[15] In Order MO-1285, Adjudicator Laurel Cropley discussed the factors to consider when addressing whether a conflict of interest exists. She wrote:

Previous orders of this office have considered when a conflict of interest may exist. In general, these orders have found that an individual with a personal or special interest in whether the records are disclosed should

not be the person who decides the issue of disclosure. In determining whether there is a conflict of interest, these orders looked at (a) whether the decision-maker had a personal or special interest in the records, and (b) whether a well-informed person, considering all of the circumstances, could reasonably perceive a conflict of interest on the part of the decision-maker (see, for example: Order M-640).

[16] There is no evidence before me that the *FIPPA* coordinator had a special or personal interest in the records at issue in this appeal. The *FIPPA* Coordinator is not the statutory decision maker for the purposes of *FIPPA*. In my view, there is nothing before me to substantiate a finding that the *FIPPA* coordinator was in a conflict of interest with respect to the appellant's request and/or appeal under the *Act*.

[17] I now turn to the other issues in the appeal.

## **B. Do the records contain personal information?**

### ***Personal Information***

[18] 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 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 if 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;

[19] Sections 2(3) and (4) also relate to the definition of personal information. These sections state:

(3) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.

(4) For greater certainty, subsection (3) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

[20] 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.<sup>1</sup>

[21] 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.<sup>2</sup>

[22] LAO submits that certain portions of a record contains the appellant's personal information. In addition, it submits that the background information of the Area Committee members who handled the appellant's legal aid file which are included in this appeal as responsive records, constitute these individuals' personal information. LAO states:

This submission is made based on the nature of the record, the fact that it contains employment history, educational history, home address,

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<sup>1</sup> Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

<sup>2</sup> Orders P-1409, R-980015, PO-2225 and MO-2344.

telephone number and email for two of the Area Committee members (as opposed to professional address provided by the third member) and additional personal information in the resumes provided. Please note that the two members who provided their home contact information in their resumes do not carry out their professions or business from their dwellings. Therefore, it is submitted that this personal information does not fall within section 2(4) so as to except the information from the definition of personal information.

[23] LAO further submits that the individuals would be identifiable from the information in the resumes even if their names are not disclosed. LAO submits:

Certainly the unique telephone, address and email information clearly identifies the individual. Even more general information about the background of education and employment, when analyzed together, would allow an assiduous requester to identify the individual to whom the information relates.

[24] Section 2(3) of the *Act* modifies the definition of the term "personal information" by excluding an individual's name, title, contact information or designation which identifies that individual in a "business, professional or official capacity". Section 2(4) further clarifies that contact information about an individual who carries out business, professional or official responsibilities from their dwelling does not qualify as "personal information" for the purposes of the definition in section 2(1). As a result, I find that the names of the affected parties that appear in the records, does not qualify as their personal information for the purposes of the definition of that term in section 2(1). Furthermore, the business contact information for one of the affected parties is also not their personal information. The contact information for the two other affected parties, who do not carry out their business, professional or official responsibilities from their dwelling, qualifies as their personal information.

[25] Furthermore, the Checklist for two Area Committee applicants, resume cover letters for two Area Committee applicants and the resumes for three Area Committee applicants contain information relating to the education and employment history of the affected parties. In my view, this information clearly falls within the scope of personal information as set out in paragraph 2(1)(b) of the definition. These records relate solely to the affected parties and do not contain the personal information of the appellant.

[26] Finally, certain information in the Area Committee Decision Record qualifies as the personal information of the appellant because it contains "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" (paragraph 2(1)(h)). This information appears in a record that contains the names of the three Area Committee members.

**C. Is the personal information in the record exempt under sections 21(1) or 49(b)?**

[27] Section 47(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Sections 49(a) and 49(b) provide a number of exceptions to this general right of access.

[28] Under section 49(b), where a record contains personal information of both the requester and another individual, and disclosure of the information would constitute an “unjustified invasion” of the other individual’s personal privacy, the institution may refuse to disclose that information to the requester.

[29] LAO disclosed all the information in the Area Committee Decision Record except for the names of the Area Committee members. As I have found the names of the Area Committee members do not qualify as personal information, section 49(b) has no application in the appeal before me. The withheld portion of that record (being the three names) will be analyzed under section 49(a) in conjunction with section 20, below.

[30] Accordingly, I will now determine if the exemption at section 21(1) of the *Act* applies to the Checklist for two Area Committee applicants, resume cover letters for two Area Committee applicants and the resumes for three Area Committee applicants.

[31] Under section 21, where a record contains personal information only of an individual other than the requester, the LAO must refuse to disclose that information unless disclosure would not constitute an “unjustified invasion of personal privacy”.

[32] In the section 21(1) analysis, sections 21(2), (3) and (4) of the *Act* provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of another individual’s personal privacy. Section 21(2) provides some criteria for the LAO to consider in making this determination;<sup>3</sup> section 21(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy; and section 21(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

***Section 21(3)(d) and (h)***

[33] 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 21(1). Once a presumed unjustified invasion of personal privacy under section 21(3) is

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<sup>3</sup> 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].



established for records which are claimed to be exempt under section 21(1), it can only be overcome if section 21(4) or the "public interest override" at section 23 applies.<sup>4</sup>

[34] LOA submits that the presumptions at sections 21(3)(d) and (h) are applicable in the circumstances of this appeal.

[35] Sections 21(3)(d) and (h) read:

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

(d) relates to employment or educational history;

(h) indicates the individual's racial or ethnic origin, sexual orientation or religious or political beliefs or associations.

[36] With respect to the application of the presumption at section 21(3)(d) LAO submits:

... the records contain the employment and educational history of the Area Committee members. Caselaw indicates that information contained in resumes [Orders M-7, M-319 and M-1084] and work histories [Orders M-1084 and MO-1257] falls within the scope of section 21(3)(d).

[37] With respect to the application of the presumption at section 21(3)(h) LAO submits that "in the case of one of the members, the volunteer activities indicates the person's ethnic origin."

[38] I have reviewed the Checklist for two Area Committee applicants, resume cover letters for two Area Committee applicants and the resumes for three Area Committee applicants and, in my opinion, they all contain personal information relating to the affected parties' employment and educational history. I find that the presumed unjustified invasion of personal privacy at section 21(3)(d) therefore applies to this information. In addition, one of the resumes contains information that falls within the presumption at section 21(3)(h) because it indicates the affected party's ethnic origin.

[39] Section 21(4) does not apply to this information and the appellant did not raise the possible application of the public interest override at section 23 of the *Act*. Accordingly, I conclude that the disclosure of this information would constitute an unjustified invasion of the personal privacy of the affected parties. Accordingly, this information is exempt from disclosure under section 21(1) of the *Act*.

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<sup>4</sup> *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767.

[40] As I have found the information to be exempt under section 21(1) of the *Act*, it is not necessary for me to consider whether it is also exempt under section 20 or 49(a) (in conjunction with section 20), as the case may be.

[41] I will now turn to the other information requested by the appellant, being the names of the three Area Committee members contained in the records, as well as the business contact information of one of the three Area Committee members.

**D. Does section 20 or 49(a) (in conjunction with section 20) apply to information in the records?**

[42] Section 49(a) reads:

A head may refuse to disclose to the individual to whom the information relates personal information,

where section 12, 13, 14, 14.1, 14.2, 15, 16, 17, 18, 19, **20** or 22 would apply to the disclosure of that personal information. [emphasis added]

[43] 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.

[44] In the case of section 20, the institution must provide evidence to establish a reasonable basis for believing that harm will result from disclosure. In other words, the institution must demonstrate that the reasons for resisting disclosure are not frivolous or exaggerated. However, while the expectation of harm must be reasonable, it need not be probable.<sup>5</sup>

[45] A person's subjective fear, while relevant, may not be sufficient to establish the application of the exemption.<sup>6</sup>

[46] The term "person" is not necessarily confined to a particular identified individual, and may include any member of an identifiable group or organization.<sup>7</sup>

[47] As set out above, because the Area Committee Decision Record contains the appellant's personal information, it will be analyzed under section 49(a), in conjunction

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<sup>5</sup> *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.) (*Ontario Ministry of Labour*).

<sup>6</sup> Order PO-2003.

<sup>7</sup> Order PO-1817-R.

with section 20. The other records, which do not contain the appellant's personal information, will be analyzed under section 20 only.

### ***Representations on Section 20***

[48] LAO provides confidential and non-confidential representations setting out the factual foundation in support of its position that section 20 applies in the circumstances of this appeal.

[49] In its non-confidential representations LAO submits:

... that two affected persons have indicated with detailed reasons that they have a subjective fear for their health or safety. LAO recognizes that a subjective fear is not determinative, although it is relevant. However, in this case, it is also LAO's submission that the Area Committee members have provided sufficient basis in their letters provided to LAO on this issue to support a reasonable basis for LAO's conclusion that endangerment to their health or safety could result from disclosure. Although only two Area Committee members have expressed subjective fear, the Area Committee decision was a unanimous one and all of the members stand in the same position with respect to risk.

The issue is the identity of the Area Committee members and it is they themselves who would be the target of any threat. The Area Committee members have identified various characteristics of the requester which they are aware of which represent a basis for a conclusion that the requester may pose a threat to health or safety.

[50] LAO submits that one of the Area Committee members advised the LAO that the appellant relentlessly pursues his grievances and that they anticipate that the release of their name will lead to harassment by the requester.

[51] In an affidavit provided by the head of LAO, portions of which were not shared with the appellant due to confidentiality concerns, the deponent sets out a number of factors that he considered in reaching his decision not to release the information to the appellant:

- the health and safety concerns of members of the Area Committee
- the fact that the appellant has been refused legal aid assistance and is persistent in his efforts to reverse that decision

- the nature of correspondence between the appellant and LAO in the past which has been accusatory of staff and has included unfounded allegations of collusion
- the history of complaints by the requester which provides a basis for a conclusion that decision makers in the Area Committee process may be harassed by the appellant if disclosure occurs
- such harassment could reasonably affect the health of the person being harassed
- the behaviour of the requester which supports the conclusion of one of the Area Committee members that the requester does not react rationally to decisions adverse to him
- the likelihood that if any action were taken by the requester against Area Committee members, it would likely be taken against all of them, as they were equally involved in the decision to refuse legal aid assistance in this case and the Area Committee decision was a unanimous one

[52] The appellant provided no representations to challenge these assertions.

### ***Analysis and Findings on Section 20***

[53] In Order PO-1940, Adjudicator Laurel Cropley found that section 20 applied to deny records to an appellant who was deemed to be “angry and potentially dangerous” after having engaged in a pattern of abusive and intimidating correspondence with the institution. In that order she stated:

[I]t is noteworthy to add (in response to the appellant’s assertions that he would not physically attack anyone) that a threat to safety as contemplated by section 20 is not restricted to an “actual” physical attack. Where an individual’s behaviour is such that the recipient reasonably perceives it as a “threat” to his or her safety, the requirements of this section have been satisfied. As the Court of Appeal found in *Ontario (Ministry of Labour)*<sup>8</sup>:

It is difficult, if not impossible, to establish as a matter of probabilities that a person’s life or safety will be endangered by the release of a potentially inflammatory record. Where there is a reasonable basis for believing that a person’s safety will be endangered by disclosing a record, the holder

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<sup>8</sup> See footnote 5.

of that record properly invokes [sections] 14(1)(e) or 20 to refuse disclosure.

[54] I agree with the reasoning of Adjudicator Cropley and find it applicable to the current appeal.

[55] In the current appeal, based on LAO's confidential and non-confidential representations, I conclude that there is a reasonable basis for concern about the appellant's behaviour and that the reasons for resisting disclosure are not frivolous or exaggerated. I find that the evidentiary standard set out in *Ontario (Ministry of Labour)* for establishing the application of section 20 has been met in this appeal.

[56] The balance of the information at issue in this appeal, therefore, qualifies for exemption under section 20, or 49(a) (in conjunction with section 20), as the case may be.

#### **E. Can the records be reasonably severed without revealing exempt information?**

[57] Where a record contains exempt information, section 10(2) requires LAO to disclose as much of the record as can reasonably be severed without disclosing the exempt information. This office has held, however, that a record should not be severed where to do so would reveal only "disconnected snippets", or "worthless", "meaningless" or "misleading" information. Further, severance will not be considered reasonable where an individual could ascertain the content of the withheld information from the information disclosed.<sup>9</sup>

[58] LAO submits with respect to severance that:

... the only information in the records at issue which could be reasonably be severed and disclosed, without directly or inferentially disclosing the identity of the Area Committee members (on the basis that doing so would jeopardize their health or safety) are the documents entitled "Checklist for Area Committee Applicants", which were submitted by two Area Committee members, provided also that the names and invitation numbers of the Area Committee members are not disclosed.

[59] I agree. In my view, once the names and invitation numbers of the two Area Committee members are severed it is possible to disclose the balance of the documents entitled "Checklist for Area Committee Applicants", which were submitted by two Area Committee members, without disclosing the information that I have found be exempt.

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<sup>9</sup> Orders PO-1663 and *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner)* (1997), 102 O.A.C. 71 (Div. Ct.).

[60] Based upon my review of the information in the records that I have not ordered to be disclosed, in the circumstances of this case, any remaining possible severance would either reveal exempt information or result in disconnected snippets of information being revealed.

**F. Has the LAO appropriately exercised its discretion?**

[61] The section 20 and 49(a) exemptions are discretionary and permit the LAO to disclose information, despite the fact that it could be withheld. On appeal, this office may review LAO's decision in order to determine whether it exercised its discretion and, if so, to determine whether it erred in doing so.<sup>10</sup>

[62] I have reviewed the circumstances surrounding this appeal and LAO's confidential and non-confidential representations. In all the circumstances, including the amount of information that will be disclosed to the appellant as a result of this order, I am satisfied that LAO has not erred in the exercise of its discretion not to disclose the remaining information to the appellant.

**ORDER:**

1. I order the LAO to disclose to the appellant the documents entitled "Checklist for Area Committee Applicants", which were submitted by two Area Committee members, with the names and invitation numbers of the two Area Committee members being withheld, by sending these records to the appellant by **March 30, 2012** but not before **MARCH 26, 2012**.
2. I uphold LAO's decision to deny access to the balance of the information at issue in the records.
3. In order to verify compliance with provision 1 of this order, I reserve the right to require the LAO to provide me with a copy of the records as disclosed to the appellant.

Original signed by: \_\_\_\_\_  
Steven Faughnan  
Adjudicator

February 24, 2012 \_\_\_\_\_

<sup>10</sup> Orders PO-2129-F and MO-1629.