

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-3127

Appeal PA10-55

Ministry of the Attorney General

October 31, 2012

**Summary:** The appellant made a request to the ministry for access to its guidelines relating to court interpreters. The ministry granted partial access to two manuals, withholding information pursuant to the mandatory personal privacy exemption in section 21(1). In this order, the ministry's decision is partially upheld.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, ss. 2(1)(definition of "personal information"), 21(1).

**Orders and Investigation Reports Considered:** PC-990034-I.

### OVERVIEW:

[1] The appellant made a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*) to the Ministry of the Attorney General (the ministry) for access to information relating to "the guidelines stipulated to [two named Federal Court Reporters]." The request was subsequently clarified as follows:

With respect to my request under [the *Act*], you indicated that there are two (2) Guideline Manuals at the Provincial Level that I am entitled to.

I politely request that both of the abovementioned Guideline Manuals be provided to me as earliest as possible.

[2] The ministry located responsive records and issued a decision granting access, in part, to two manuals. The ministry advised that some information had been denied pursuant to the mandatory personal privacy exemption in section 21(1) of the *Act*.

[3] During mediation, the ministry clarified its decision as follows:

- Part III of the Procedures for Court Reporters, disclosed in its entirety; and
- Transcript Manual: pages 1 – 57 disclosed in its entirety; pages 58 – 133 were partially disclosed; pages 134 – 175 (Bilingual Transcript Samples) were removed as not responsive; pages 176 – 221 (Appendix B) disclosed in its entirety.

[4] The appellant confirmed with the mediator that he wishes to pursue access to the information withheld.

[5] The ministry advised the mediator that the Transcript Manual had been revised to remove both the names of individuals and Bilingual Transcript samples. The ministry issued a supplemental decision to the appellant advising that access had been granted to the revised Transcript Manual in full. The ministry took the position that the Bilingual Transcript samples in the unrevised Transcript Manual are not responsive to the request.

[6] The appellant confirmed with the mediator that he still wishes to pursue access to the portions of the original unrevised Transcript Manual withheld under section 21(1) and the Bilingual Transcript Samples that were identified as not responsive.

[7] During my inquiry, I sought and received representations from the ministry and the appellant. Representations were shared in accordance with section 7 of the IPC's *Code of Procedure and Practice Direction 7*.

[8] The ministry issued a further revised decision when it submitted its representations. The ministry disclosed both the English and bilingual transcripts, in part, withholding information under section 21(1) of the *Act*. As the ministry has determined that the bilingual transcripts are responsive to the appellant's request, the responsiveness of this information is no longer an issue in this appeal.

[9] In this order, I partially uphold the ministry's decision.

## **RECORDS:**

[10] The following portions of the unrevised Transcript Manual remain at issue:

- Pages 58 – 133 of the English transcripts; and

- Pages 134 – 175 of the bilingual transcripts.

## **ISSUES:**

- A. Do the records contain “personal information” for the purposes of section 2(1) of the *Act*?
- B. Does the mandatory personal privacy exemption at section 21(1) apply to the information at issue?
- C. Should the record be severed under section 10(2) of the *Act*?

## **DISCUSSION:**

### **Preliminary Matter**

[11] The appellant provided extensive documentation regarding his court cases and the present appeal. I have reviewed this information. The appellant’s representations allege various conspiracies involving members of the judiciary, various government agencies and this office. Regarding these matters, I make no comment.

[12] The appellant takes issue with the ministry’s decision regarding the records at issue, as follows:

- Information from the records he has received is missing.
- Copies of the records are illegible.
- Other guidelines ought to exist that may be responsive to his request.

[13] I note that the “missing” information in the records is information that was withheld from the appellant and is the subject of the rest of this order. The ministry withheld the information on the basis of the section 21(1) exemption.

[14] The appellant states that the copy of page 10 (1.8 Overview of Transcript Production Sector) he received is illegible and he would like the ministry to provide him with another copy.

[15] The appellant argues that there are other guidelines that may be responsive to his request, but the issue of reasonable search is not at issue in this appeal. I understand that this issue was addressed at mediation, and the ministry informed the appellant that he could make a new request for this information, if necessary. I will not be addressing this issue further in the appeal.

[16] Finally, the appellant did not make any relevant submissions regarding the application of the section 21(1) exemption. Accordingly, I will not refer to his representations further in this order.

**A. Do the records contain “personal information” for the purposes of section 2(1) of the *Act*?**

[17] In order to determine which section 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), in part, 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,
- (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;

[18] 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) of the section 2(1) definition of that term may still qualify as personal information.<sup>1</sup>

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<sup>1</sup> Order 11.

[19] 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>2</sup>

[20] 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>3</sup>

[21] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.<sup>4</sup>

[22] The ministry submits that the records at issue contain English and French excerpts of transcripts. The samples were taken from actual court transcripts and were not anonymized and thus contain information from real criminal, civil and family law proceedings.<sup>5</sup> The ministry submits that the nature of the court proceedings must be taken into account to determine if it is reasonable that the individuals referred to in the records would be identifiable from the disclosure of the information. The ministry submits that the records at issue contain the following types of personal information:

- Information relating to the national or ethnic origin, age and sex of the individual (paragraph (a) of the definition of "personal information");
- Information relating to the criminal history of the individuals (paragraph (b) of the definition of "personal information");
- the address of the individual (paragraph (d) of the definition of "personal information"); and
- the individual's name where it appears with other personal information or where the disclosure of the name would reveal other personal information about the individual (paragraph (h) of the definition of "personal information").

[23] The ministry submits that the withheld information does not contain any information relating to the appellant and instead, contains the personal information of other individuals.

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<sup>2</sup> Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

<sup>3</sup> Orders P-1409, R-980015, PO-2225 and MO-2344.

<sup>4</sup> Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

<sup>5</sup> The ministry emphasizes that its Transcript Manual has been revised so that it no longer contains the names of individuals.

***Names of litigants, accused and witnesses***

[24] The ministry notes that it severed the names of the accused in adult and youth criminal matters, litigants in civil matters and the parties in family law proceedings. The ministry submits that disclosure of the names of these individuals would reveal that they were involved in a court proceeding which is "personal information" within the meaning of paragraph (h) of the definition of that term in section 2(1) of the *Act*.

[25] Based on my review of the records, I find that the names of the individual litigants, the accused in adult and youth criminal matters and the parties in family law proceedings is their personal information for the purposes of the *Act*. Further, I find the names of the individual witnesses in those proceeding are also their personal information. Disclosure of the individuals' names would reveal that they were involved in a court proceeding, as well as their marital or family status, and information relating to their education, criminal or employment history. I also find that the records contain the birth dates and the addresses of these individuals within the context of their evidence given during the proceeding. I find this information is also their personal information within the meaning of section 2(1) of the *Act*.

***Names of businesses***

[26] The ministry also withheld the names of the businesses involved in litigation and cites this office's Privacy Complaint report PC-990034-1 in support of its position that charges against a director of a company in a personal capacity was personal information.

[27] On the other hand, I find that the name of businesses is not personal information for the purposes of *Act*. In Privacy Complaint PC-990034-1, Commissioner Ann Cavoukian found the following:

The registered name of the company, the operating name, the information regarding charges laid against the company and the date, name and address of the court where the complainant and his company are scheduled to appear in relation to the charges is not "personal information", as defined in section 2(1) of the *Act*.

The complainant's name, age, home address along with information regarding charges laid against him for violations under the WSIA is "personal information", as defined in section 2(1) of the *Act*.

[28] This finding is consistent with other orders of this office where it has been held that 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>6</sup> In my view, the information at issue in the present appeal is qualitatively different than that in the cited privacy complaint report. The disclosure of the names of businesses mentioned in the transcript samples does not disclose the operator or director's name, age, address or information about charges laid personally. Instead, disclosure of the information at issue simply would disclose the company's name within the context of a civil legal proceeding. I will order this information to be disclosed to the appellant, as I have found it is not personal information, no other mandatory exemptions apply and the ministry has not claimed any discretionary exemptions for this information.

### ***Other information***

[29] Lastly, the ministry also submitted that the following information should be severed:

- Names of judicial officials, lawyers, court interpreters;
- Information of the third parties (doctors, etc.);
- Exhibits;
- Date, time and location of proceedings; and
- Court file number, court information number.

[30] The ministry's explanation as to why this information should be withheld relate to the fact that it identifies the litigants or the accused persons. I will address the issue of whether this information can be severed below. Before making this determination, I will consider whether this information qualifies as personal information for the purposes of the *Act*.

[31] I find that the names of judicial officials, lawyers, court interpreters, and third parties witnesses<sup>7</sup> does not qualify as the personal information of these individuals for the purposes of section 2(1) of the *Act*. These individuals were acting in their professional, official and business capacity during the proceedings and I find that their names should not be withheld on the basis that it qualifies as personal information. I further find that any information given by these individuals in the transcript excerpts is not their personal information.

[32] I find that the court file number and the criminal court information number assigned to a particular case is not personal information for the purposes of section 2(1) of the *Act*. While paragraph (c) of the definition of "personal information" includes "any identifying number" or "other particular" assigned to the individual, I find that the court file number and criminal court information number are assigned to cases and are not unique to a particular individual where there are multiple litigants or accused.

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<sup>6</sup> Orders P-1409, R-980015, PO-2225 and MO-2344.

<sup>7</sup> Third party witnesses are those witnesses who are not individual persons and are providing testimony in their professional capacity.

[33] I will now consider whether the portions of the records containing personal information are exempt under section 21(1) of the *Act*.

**B. Does the mandatory personal privacy exemption in section 21(1) apply to the records at issue?**

[34] 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.

[35] If the information fits within any of paragraphs (a) to (f) of section 21(1), it is not exempt from disclosure under section 21(1). In the circumstances, it appears that the only exception that could apply is paragraph (f), which states:

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.

[36] The factors and presumptions in section 21(2), (3) and (4) help in determining whether disclosure would or would not be an unjustified invasion of privacy under section 14(1)(f). In the present appeal, the ministry submits that the presumptions set out in sections 21(3)(d) and (h) and the consideration in section 21(2)(f) are all relevant to my determination of whether disclosure of the personal information would be an unjustified invasion of the individual's personal privacy. These sections state:

(2) A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

(f) the personal information is highly sensitive;

(3) 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.

[37] The ministry submits that disclosure of these portions of the records would constitute an unjustified invasion of personal privacy as it would reveal an individual's employment status at the time of the legal proceeding. Further the ministry submits



that it has severed information pertaining to an individual's place of birth as disclosure would indicate the individual's ethnic origin. Finally, the ministry submits that disclosure of the information in the records could reasonably be expected to cause excessive personal distress to the individuals whose personal information is set out in the records.

[38] The ministry submits that the following personal information, if disclosed, could cause personal distress to the individuals:

- Severed information from the criminal transcripts which would disclose the charges against the individual.
- Severed information from child protection proceedings that would identify the parents and children involved in the proceedings.

[39] In order for section 21(2)(f) to be considered relevant I must consider whether there is a reasonable expectation of significant personal distress if the information is disclosed.<sup>8</sup>

[40] The appellant's representations do not address this issue. Based on my review of the information for which the ministry has claimed the exemption in section 21(1), I find there are no factors favouring disclosure, listed or otherwise. Further, I find that the presumptions in sections 21(3)(d) and (h) apply to portions of the record and the factor in section 21(2)(f) is a relevant consideration in my determination. Accordingly, I find the exemption in section 21(1) applies to exempt the personal information in the records at issue.

### **C. Should information be severed from the record under section 10(2)?**

[41] Where a record contains exempt information, section 10(2) requires the ministry 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>

[42] The ministry argues that the following information should be severed from the records as disclosure of it would identify the individuals whose personal information is contained in the records, even if their personal information is withheld:

- Names of judicial officials, lawyers and court interpreters;
- Information about witnesses and third parties;

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<sup>8</sup> Orders PO-2518, PO-2617, MO-2262 and MO-2344.

<sup>9</sup> Order PO-1663 and PO-1735 and *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner)* (1997), 102 O.A.C. 71 (Div. Ct.).

- Evidence of witnesses and third parties;
- Exhibits; and
- Date, time and location of proceedings.

[43] The ministry notes that the public gets information about court proceedings through the media. Thus, the ministry states:

In general, court files are publicly accessible. Members of the public may attend a court office and inspect certain criminal court documents. The same is true for civil and some family court files on payment of the prescribed fees.

Criminal court files contain original charging documents, copies of bail documents, search warrant information and details of dispositions of the case. Civil court files include pleadings that allege breaches of legal duties and family court files may include private information (e.g. personal finances) and details about the resolution of these disputes.

Criminal court files relating to young persons are treated differently. These files, and any other documents in court proceedings that make reference to the information contained in these files, are generally not accessible to the public. Access to this information is restricted by the *Youth Criminal Justice Act* and is accessible only in narrow circumstances to persons expressly authorized by the legislation.

Child protection hearings are also closed to the public pursuant to the *Child and Family Services Act*. The legislation prohibits the publication of any identifying information about a child, child's parent or foster parent or a member of the child's family in a child protection case. Court staff are therefore not permitted to provide access to court documents filed in these cases.

[44] The ministry further made specific submissions on how each of the pieces of information could be used to identify an individual. I summarize its arguments here:

- The names of the judicial officials, lawyers and court interpreters combined with the information in the record would provide someone with sufficient information to identify the parties.
- The combination of exhibits filed in a particular case is unique and would permit someone familiar with the case to identify the parties involved.

- The date, time and location of the hearings would permit any person to attend the court offices and using the resources available, draw an accurate inference of the parties involved.
- The court file number and court information number if disclosed would permit a person to attend a court office and access the contents of the court file, thereby identifying the parties involved.

***Records relating to young persons and containing publication bans***

[45] Based on my review of the withheld information in the records, I accept that the following information should be severed from the records relating to the criminal court files for young persons, child protection hearings or proceedings where there is a publication ban:

- Names of judicial officials, lawyers, witnesses, third parties;
- Exhibit references;
- Date and location of proceeding; and
- Court file number and court information number.

[46] In particular, I refer to information on pages 87, 94, 97, 100, 102, 112, 126 of the records. While I am not satisfied, based on the ministry's arguments alone, that disclosure of this information could reasonably be expected to result in the individuals being identified, I find that this information would not normally be made public in these cases. I accept that there are public policy reasons for the confidentiality of these files and accordingly, I find that the above information should be severed from the records.

***Records relating to adult accused, civil litigants***

[47] In particular, I refer to the information on pages 62, 64, 65, 67, 68, 70, 71, 73, 74, 75, 76, 77, 79, 81, 83, 85, 89, 91, 104, 106, 108, 110, 114, 116, 118, 120, 122, 124, 128, 130, 132, 135, 137, 138, 140, 142, 144, 146, 148, 149, 151, 153, 155, 157, 159, 161, 163, 165 and 167.

[48] I find the same argument cannot be made for the severance of the information from the pages of records relating to the adult civil litigants and accused. The ministry itself confirms that information about these files would be available to the public and the same public policy concern in protecting this information from the public does not exist. Again, I am not satisfied on the basis of the ministry's evidence that disclosure of this information alone would result in the identification of the parties in the proceedings. Accordingly, the following information should be disclosed to the appellant:

- Names of judicial officials, lawyers, witnesses, third parties;
- Exhibit references;

- Date and location of proceeding; and
- Court file number and court information number.

**ORDER:**

1. I order the ministry to disclose the information withheld on page 120 of the record by providing the appellant with a copy of this information by **December 10, 2012** but not before **December 3, 2012**.
2. I also order the ministry to disclose the following information on pages 62, 64, 65, 67, 68, 70, 71, 73, 74, 75, 76, 77, 79, 81, 83, 85, 89, 91, 104, 106, 108, 110, 114, 116, 118, 120, 122, 124, 128, 130, 132, 135, 137, 138, 140, 142, 144, 146, 148, 149, 151, 153, 155, 157, 159, 161, 163, 165, 167, by providing the appellant with a copy of this information by **December 3, 2012**:
  - Names of judicial officials, lawyers, third parties;
  - Exhibit references;
  - Date and location of proceeding; and
  - Court file number, information number.
3. I uphold the ministry's decision to withhold the remaining information.
4. In order to verify compliance with order provisions 1 and 2, I reserve the right to require the ministry to provide me with a copy of the record provided to the appellant.

Original signed by: \_\_\_\_\_  
Stephanie Haly  
Adjudicator

\_\_\_\_\_ October 31, 2012