

Information and Privacy Commissioner,  
Ontario, Canada



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

---

## ORDER PO-3451

Appeal PA12-561

Ministry of Community and Social Services

January 22, 2015

**Summary:** The appellant made a request under the *Freedom of Information and Protection of Privacy Act (the Act)* to the Ministry of Community and Social Services (the ministry) for all information relating to him. The request was bifurcated and this appeal deals with the appellant's request for a copy of his file with the ministry's Ontario Disability Support Program. The ministry granted access, in part, claiming the application of the discretionary exemption in section 49(b), in conjunction with section 21 (personal privacy), to one portion of one record. During the mediation of the appeal, the appellant raised the issue of reasonable search. In this order, the adjudicator upholds the ministry's decision, its exercise of discretion and search, and dismisses the appeal.

**Statutes Considered:** *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 2 (definition of personal information), 21(1), 24 and 49(b).

### OVERVIEW:

[1] This order disposes of the issues raised as a result of a decision made in response to the appellant's request to the Ministry of Community and Social Services (the ministry) under the *Freedom of Information and Protection of Privacy Act (the Act)* for:

All access to my full and complete Ministry of Community and Social Service Records throughout the Ministry inclusive of my records in the

Ontario Disability Support Program, the Family Responsibility Office, copies of correspondence sent to [the past Minister] any electronic records, any information concerning what other Government Agencies, Boards or Commissions, ministries or other parties, portions of my records that my personal information has been shared with. I would also like any correspondence concerning me, sent to my former employment support provider, or from them. Copies of my court file. How many complaints are on file from my estranged wife, [named individual].

[2] With the appellant's agreement, the ministry opened two request files. During the processing of this request, the ministry contacted the appellant, who clarified and narrowed the scope of the request to include only his Ontario Disability Support Program (ODSP) file. Therefore, this appeal file relates solely to the ODSP records. The ministry granted the appellant access to the records, with the exception of a portion of one record. The ministry claimed the application of the discretionary exemption in section 49(b), in conjunction with section 21(1) (personal privacy) of the *Act*, for this single severance of information.

[3] The appellant appealed the ministry's access decision relating to the ODSP records and this appeal was opened. During the mediation of the appeal, the appellant advised the mediator that he is pursuing access to the information that was withheld and that he believes that more responsive records should exist. As a result, the ministry conducted another search for responsive records. The ministry subsequently advised the appellant that it conducted a further search for responsive records and confirmed that it did not locate further responsive records. The appellant maintained his position that further records should exist. Consequently, reasonable search was added as an issue in this appeal.

[4] The appeal was then moved to the adjudication stage of the appeals process, where an adjudicator conducts an inquiry. I provided both parties with the opportunity to provide representations. I received representations only from the ministry, which were shared with the appellant. In addition, during the inquiry the ministry issued a revised decision letter to the appellant, claiming the application of an additional discretionary exemption, namely section 14(1)(d) (law enforcement). I did not notify two other individuals who might have an interest in the information at issue because one is an anonymous informant and the other could not be located.

[5] For the reasons that follow, I uphold the ministry's access decision, its exercise of discretion and its search as being reasonable. The appeal is dismissed.

## **RECORDS:**

[6] The withheld information consists of a three-line paragraph, which forms part of a file note. The remainder of the note was disclosed to the appellant, as well as the rest of his ODSP file.

## **ISSUES:**

- A: Does the record contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?
- B: Does the discretionary exemption at section 49(b), in conjunction with section 21(1), apply to the information at issue?
- C: Did the institution exercise its discretion under section 49(b)? If so, should this office uphold the exercise of discretion?
- D: Did the institution conduct a reasonable search for records?

## **DISCUSSION:**

### **Issue A: Does the record contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?**

[7] 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.

[8] 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.<sup>1</sup> 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> To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.<sup>3</sup>

[9] The ministry submits that the withheld portion of the record contains the personal information of two individuals, namely:

- An unnamed individual (a complainant) who supplied information to the ODSP and who could be reasonably identified by the appellant if the information was disclosed, as the complainant is likely someone with a pre-existing relationship with the appellant. The ministry notes that an individual is also identifiable from a record where he or she could be identified by those familiar with the particular circumstances or events contained in the record;<sup>4</sup> and

---

<sup>1</sup> Order 11.

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

<sup>3</sup> Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

<sup>4</sup> *Ibid* at para. 15.

- A second individual named in the information supplied, including this individual's name and a telephone number. The ministry argues that the telephone number could be used in combination with other publicly available sources (such as the reverse look-up feature on canada411.ca) to obtain further identifiable information about an individual.

[10] I have reviewed the record. The withheld information was provided to the ODSP's "Provincial Hotline" by an anonymous source. I find that this information contains the personal information of the appellant, namely his name where it appears with other personal information about him, which falls within paragraph (h) of the definition of personal information in section 2 of the *Act*. In addition, the withheld information also contains the personal information of a second individual<sup>5</sup>, including this person's name where it appears with other personal information about that individual. This personal information also falls within paragraph (h) of the definition of personal information.

[11] There is also a telephone number contained in the withheld portion of the record. However, because of the way the sentence containing the telephone number is written, it is not clear as to whether the telephone number is attributed to the second individual or to the anonymous source. In any event, it is possible that the disclosure of this telephone number could assist an observer in identifying an individual. However, I find that the ministry has not provided sufficient evidence to support its position that the record contains the personal information of the anonymous source because he or she is likely someone with a pre-existing relationship with the appellant, or that this person could be identified by those familiar with the circumstances contained in the record. On my review of the record, I find that the anonymous source is not identifiable. Therefore, I find that the record does not contain the personal information of the anonymous source.

[12] In sum, I find that the withheld information contains the personal information of the appellant and of one other identifiable individual, but not that of the anonymous source.

**Issue B: Does the mandatory exemption at section 21(1) or the discretionary exemption at section 49(b) apply to the information at issue?**

[13] 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. Under section 49(b), where a record contains personal information of both the requester and another individual, and disclosure of the

---

<sup>5</sup> Not the anonymous source.

information would be an “unjustified invasion” of the other individual’s personal privacy, the institution may refuse to disclose that information to the requester. Since the section 49(b) exemption is discretionary, the institution may also decide to disclose the information to the requester.

[14] In applying the section 49(b) exemption, sections 21(2) and (3) help in determining whether disclosure would or would not be an unjustified invasion of privacy. Also, section 21(4) lists situations that would not be an unjustified invasion of personal privacy. In particular, this office will consider, and weigh, the factors and presumptions in sections 21(2) and (3) and balance the interests of the parties in determining whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy.<sup>6</sup>

[15] The ministry states that the personal information was collected under the *Ontario Disability Support Program Act (ODSPA)*, relating to a determination of eligibility for social assistance. Therefore, the ministry argues, there is a presumed unjustified invasion of the two other individuals’ personal privacy because section 21(3)(c) applies to this personal information.

[16] The ministry further submits that the presumption in section 21(3)(b) also applies because the withheld information was compiled and is identifiable as part of an investigation into a possible violation of law. The ministry goes on to argue that the record at issue constitutes the starting point that could result in: proceedings before an administrative tribunal; proceedings under the *Provincial Offences Act*;<sup>7</sup> or criminal proceedings in relation to possible welfare fraud.

[17] With respect to the factors in section 21(2), the ministry argues that the factors in section 21(2)(e), (f), (g), (h) and (i), which weigh against the disclosure of personal information, apply in this instance. The ministry states:

The individual who made the report expected confidentiality in providing the information to the ministry. As the ministry’s position is that this information constitutes “personal information,” release of this information would reasonably allow this individual to be identified. It could be quite distressing to the informant that this sensitive information, provided with an expectation of privacy, was released. The identification of such informants could put them at risk from possible reprisal. Further, the release of this information may undermine the confidentiality of the Welfare Fraud Hotline and the *ODSPA* and result in fewer Ontarians willing to come forth with information that could prevent abuses or misuse of the ODSP. Thus, the considerations under ss. 21(2)(e), (f) and (h) are relevant to this appeal and all weigh against disclosure of the information.

---

<sup>6</sup> Order MO-2954.

<sup>7</sup> R.S.O. 1990, Chapter P.33.

Further, the information, being a tip, may or may not be accurate, and the considerations under ss. 21(2)(g) and (i) are also relevant and support a finding of an unjustified invasion of personal privacy.

[18] The ministry also submits that none of the exceptions in section 21(4) apply in these circumstances.

[19] I find that the information at issue is exempt from disclosure under section 49(b), in conjunction with section 21(1). The disclosure of the personal information of the identifiable individual in the record would result in an unjustified invasion of his or her privacy under section 49(b). As my finding is based on my weighing the factors in section 21(2), it is not necessary for me to determine whether any of the presumptions in section 21(3) apply in these circumstances.

[20] Firstly, in the absence of representations from the appellant and in reviewing the record, I find that none of the factors in section 21(2)<sup>8</sup> weighing in favour of disclosure are applicable in this instance. Secondly, I find that two of the factors weighing against disclosure are applicable. In particular, I find that section 21(2)(f) is relevant because the personal information of the appellant the other identifiable individual in the record is highly sensitive. I also find that given that this information was provided to the ministry by an anonymous source, there is the possibility that the personal information of the individual other than the appellant is unlikely to be accurate or reliable, which triggers the application of the factor in section 21(2)(g). Conversely, I find that the factors in section 21(2)(e) and (i) do not apply, as I have not been provided with sufficient evidence to conclude that disclosure of the information at issue would expose the appellant and the other individual to pecuniary or other harm, or that it may unfairly damage their reputations.

[21] I also find that the factor in section 21(2)(h), which the ministry is relying on, is not applicable. This factor applies if both the individual supplying the information and the recipient had an expectation that the information would be treated confidentially, and that expectation is reasonable in the circumstances. Thus, section 21(2)(h) requires an objective assessment of the reasonableness of any confidentiality expectation.<sup>9</sup> Past orders of this office have found that in order for section 21(2)(h) to be a factor, the personal information at issue must have been supplied by the person to whom it relates. Accordingly, this section does not apply when one individual provides personal information about another to an institution.<sup>10</sup> In addition, in Order P-469, this office held that information supplied anonymously, which is the case in this appeal, is not supplied in confidence. Although the individual providing the information did not wish to have his or her identity to be known, he or she did not have a reasonably-held

---

<sup>8</sup> Section 21(2)(a), (b), (c) and (d).

<sup>9</sup> Order PO-1670.

<sup>10</sup> Order P-606.

expectation of confidentiality regarding the information supplied for the purposes of the *Act*.

[22] However, having found that none of the factors weighing in favour of disclosure apply and that two of the factors weighing in favour of non-disclosure, apply, I find that the information at issue is exempt under section 49(b), in conjunction with section 21(1). Lastly, I find that the withheld portion containing the appellant's personal information is so intertwined with the personal information of the other individual that severing the appellant's personal information would not be possible.

[23] Having found that the withheld information is exempt under section 49(b), in conjunction with section 21(1), it is not necessary for me to consider either the late raising of the discretionary exemption in section 14(1), or its application in this appeal.

**Issue C: Did the institution exercise its discretion under section 49(b)? If so, should this office uphold the exercise of discretion?**

[24] 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.

[25] 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; or 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.<sup>11</sup> This office may not, however, substitute its own discretion for that of the institution.<sup>12</sup>

[26] Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant:<sup>13</sup>

- the purposes of the *Act*, including the principles that individuals should have a right of access to their own personal information and 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;

---

<sup>11</sup> Order MO-1573.

<sup>12</sup> See section 54(2) of the *Act*.

<sup>13</sup> Orders P-344 and MO-1573.



- 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; and
- the historic practice of the institution with respect to similar information.

[27] The ministry submits that it properly exercised its discretion by taking into consideration all of the relevant factors, not acting in bad faith, or acting for an improper purpose. In particular, the ministry states that it understands that the request was made in the context of an individual seeking his own personal information. However, it also submits that it properly considered the full context of the situation and determined that it was appropriate for the head not to disclose the severed portion of the record. The ministry states that at the heart of its decision was the desire to protect the integrity of the ministry's Welfare Fraud Hotline and other methods of collecting information relating to the possible misuse of the ODSP. The ministry goes on to state that it took the following factors into consideration in exercising its discretion:

- The importance of the exemption in section 21(1) in protecting the personal information of individuals, particularly in the context of this request;
- The record was generated to record a tip the ministry received as to the possible misuse of the ODSP. Maintaining the confidentiality of individuals who provide this information is critical to ensuring the free flow of information in the future. Disclosure of the information would undermine public confidence in the Welfare Fraud Hotline and other methods of information collection, as well as the ministry's ability to maintain the identities of informants in confidence.

- The fact that it does not know the relationship between the requester and the two other individuals. The ministry raises the potential of retaliation against the individuals who provide information to it about potential violations of the *ODSPA*; and
- The highly sensitive nature of the information and that fact that its disclosure is likely to cause personal distress to the individual who reported the information.

[28] In addition, the ministry states that it severed the record at issue, disclosing as much information as was possible.

[29] I have carefully considered the representations of the ministry. I find that the ministry took into account relevant factors in weighing both for and against the disclosure of the information at issue and did not take into account irrelevant considerations. In my view, the ministry's representations reveal that they considered the appellant's position and circumstances and balanced it against the protection of the other identifiable individual's personal privacy in exercising its discretion not to disclose the information at issue. I am also mindful that the ministry has disclosed the entire ODSP file to the appellant, with the exception of the limited information in one record which I have found to be exempt from disclosure under the *Act*.

[30] Under all the circumstances, therefore, I am satisfied that the ministry has appropriately exercised its discretion and I uphold the ministry's exercise of discretion to apply the exemption in section 49(b), in conjunction with 21(1), to the limited withheld information.

**Issue D: Did the institution conduct a reasonable search for records?**

[31] 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.<sup>14</sup> 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.

[32] 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.<sup>15</sup> To be responsive, a record must be "reasonably related" to the request.<sup>16</sup>

---

<sup>14</sup> Orders P-85, P-221 and PO-1954-I.

<sup>15</sup> Orders P-624 and PO-2559.

<sup>16</sup> Order PO-2554.

[33] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request.<sup>17</sup>

[34] 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.<sup>18</sup> A requester's lack of diligence in pursuing a request by not responding to requests from the institution for clarification may result in a finding that all steps taken by the institution to respond to the request were reasonable.<sup>19</sup>

[35] The ministry provided its evidence on this issue by way of an affidavit sworn by the Policy Analyst who was assigned to manage this appeal, and by its representations. The ministry submits that it conducted a full and reasonable search for responsive records to the access request. The ministry states that it initially contacted the appellant to clarify his request. The clarified and narrowed request, the ministry states, was for the appellant's complete ODSP file.<sup>20</sup> The request was then sent to the ODSP Manager in the applicable region's local office, which is its usual practice. ODSP Managers, the ministry states, are responsible for overseeing a team of caseworkers and program support clerks who are the frontline workers that deliver ODSP income supports to clients.

[36] The ministry goes on to state that it maintains ODSP client files both in hard copy and on its electronic database. Because the request was for the appellant's complete ODSP file, the Manager directed a program support clerk in her office to gather all records in both the appellant's hard copy and electronic file. The clerk photocopied all of the records in the hard copy file and printed all electronic records from the database.

[37] The ministry advises that during the mediation of this appeal, the Manager conducted a second search for responsive records and reviewed the appellant's entire ODSP file again for further records. The ministry states that no further responsive records were found as a result of the second search and review of the appellant's ODSP file.

[38] On my review of the representations provided by the ministry, I am satisfied that it has conducted reasonable searches for responsive records, taking into account all of the circumstances of this appeal. A reasonable search is one in which an experienced employee expends a reasonable amount of effort to locate records which are

---

<sup>17</sup> Orders M-909, PO-2469 and PO-2592.

<sup>18</sup> Order MO-2246.

<sup>19</sup> Order MO-2213.

<sup>20</sup> The ministry provided a letter sent to the appellant by the Freedom of Information Coordinator, setting out that his clarified and narrowed request was for his complete ODSP file.

reasonably related to the request.<sup>21</sup> The ministry has provided extensive affidavit evidence explaining the nature and extent of the searches conducted in response to the request, and also the additional search conducted during the mediation of this appeal. These searches were conducted by an individual at a regional branch of the ministry where the appellant resides, which is the location where these records would reasonably be expected to be located. Although the second search did not uncover additional information, I am satisfied that these searches were reasonable in the circumstances. In addition, as the appellant did not provide representations in this inquiry, he has not provided sufficient evidence to establish a reasonable basis for concluding that the ministry's search was inadequate, or that further records exist.

**ORDER:**

I uphold the ministry's access decision, exercise of discretion and search. The appeal is dismissed.

Original Signed By:  
Cathy Hamilton  
Adjudicator

\_\_\_\_\_  
January 22, 2015

\_\_\_\_\_  
<sup>21</sup> Order M-909.