



**Information and Privacy
Commissioner/Ontario**

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

FINAL ORDER PO-2129-F

Appeal PA-020237-1

Ministry of Finance



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NATURE OF THE APPEAL:

This appeal arises from a request made by the appellant to the Ministry of Finance (the Ministry) under the *Freedom of Information and Protection of Privacy Act* (the *Act*) for information held by the Ministry about himself.

The Ministry granted the appellant partial access to the records, but denied access to the remaining three on the basis of the personal privacy exemption at section 21 of the *Act*.

The appellant appealed the Ministry's decision.

I then conducted an inquiry into the appeal, and sought and received representations from both parties. In its representations, the Ministry changed its decision with respect to two records (Records 9 and 11), indicating that it was relying on the discretionary exemption under section 49(b), in conjunction with section 21 of the *Act*, rather than on the mandatory section 21 exemption alone. The Ministry indicated that section 49(b) was appropriate since Records 9 and 11 contained the personal information of both the appellant and other individuals.

In my Interim Order PO-2111-I, I agreed with the Ministry that the withheld portions of Records 9 and 11 qualified for exemption under section 49(b) in conjunction with section 21. However, I stated, “. . . [I]t does not appear that the Ministry has exercised its discretion under section 49(b)”. Therefore, I ordered the Ministry to exercise its discretion, “taking into account all relevant factors and circumstances of this case, and with reference to the principles in Order MO-1498.” In addition, I ordered the Ministry to provide me with representations on its exercise of discretion, and gave the appellant an opportunity to submit responding representations on the exercise of discretion issue.

The Ministry provided representations, and the appellant responded. The purpose of this order is to rule on the issue of whether or not the Ministry has appropriately exercised its discretion.

DISCUSSION:

EXERCISE OF DISCRETION

Introduction

The section 49(b) exemption is discretionary, and permits the Ministry to disclose information, despite the fact that it could be withheld. On appeal, this office may review the Ministry's decision to determine whether it exercised discretion and, if so, to determine whether it erred in doing so. However, this office may not substitute its own discretion for that of the institution [see section 54(2)]. This office may find that an institution erred in its exercise of 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 that event, this office may send the matter back to the institution for a re-exercise of discretion, based on proper considerations [Order MO-1573].

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

- the purposes of the Act, including the principles that:
 - information should be available to the public;
 - individuals should have a right of access to their own personal information;
 - exemptions from the right of access should be limited and specific;
 - the privacy of individuals should be protected
- the wording of the exemption and the interests it seeks to protect;
- whether the requester is seeking their own personal information;
- whether the requester has a sympathetic or compelling need to receive the information;
- whether the requester is an individual or an organization;
- the relationship between the requester and any affected persons;
- whether disclosure will increase public confidence in the operation of the institution;
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person;
- the age of the information; and
- the historic practice of the institution with respect to similar information.

Representations

With respect to both records, the Ministry states:

The Ministry has taken into consideration all the relevant factors and the circumstances surrounding this record and concludes that the exercise of its discretion to withhold part of this record is properly exercised.

The Ministry submits, with respect to Record 9:

The severed parts of the record contain highly sensitive personal information. It alleges possible improper behaviour on the part of the third party individual. The release of the information would therefore be harmful to this individual. The severed information is not personal information of the appellant and does not in any way relate to the appellant. The material is properly severed from the record and does not in any way interfere with the appellant's right to access his personal information. In keeping with the policies, objects and provisions of the [Act], the Ministry has released as much as possible without disclosing information that is properly subject to an exemption . . .

Therefore, after having examined and weighed the competing rights of the appellant to access personal information and the right to privacy of the third party individual, the Ministry properly exercised its discretion to withhold the severed parts of record 9 that pertain to the individual.

Regarding Record 11, the Ministry states:

The severed parts of the record contain highly sensitive personal information. Individuals are naturally concerned when a police check is done on them and the fact that a record of the check now exists is a highly sensitive matter. The release of the information would therefore be harmful to these individuals. Since the other four individuals listed on the record are not in any way related to the appellant there is no justification for releasing their names. The information is not personal information to which the appellant has a right. The information is properly severed from the record and does not in any way hinder the appellant's right to access his personal information. Allowing access to the information would however be an unjustified invasion of the other individuals' privacy. In keeping with the policies, objects and provisions of the Act, the Ministry has released as much as possible without disclosing information that is properly subject to exemption . . .

Therefore, after having examined and weighed the competing rights of the appellant to access to personal information and the right to privacy of the third party individuals, the Ministry properly exercised its discretion to withhold the severed parts of record 11 that pertain to the individuals.

The appellant's representations do not address the discretion issue. Rather, the appellant discusses his personal situation to which the requested records relate.

Conclusion

I am satisfied that the Ministry exercised its discretion, and that it did not err in doing so by taking into account irrelevant considerations or failing to take into account relevant considerations. Accordingly, I uphold the Ministry's decision to withhold portions of Records 9 and 11.

ORDER:

I uphold the Ministry's decision to withhold portions of Records 9 and 11.

Original Signed By: _____ March 19, 2003 _____
David Goodis
Senior Adjudicator