Information and Privacy Commissioner,
Ontario, Canada

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

ORDER PO-3682

Appeal PA11-361

Ministry of Community and Social Services

January 3, 2017

Summary: The appellant made a request to the Family Responsibility Office (FRO) for access to his file. Access was granted, in part. During the adjudication stage of the appeal, the ministry disclosed the names of FRO employees to the appellant. In this order, the adjudicator upholds the application of the exemptions at section 49(a) (discretion to refuse to disclose requesters own information), in conjunction with section 19(a) (solicitor-client privilege), and section 49(b) (personal privacy) to the remaining withheld information and dismisses the appeal.

Statute 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"), 19(a), 21(1)(f), 21(2)(a), 21(2)(d), 21(2)(e), 21(2)(f), 21(2)(h), 21(3)(f), 49(a) and 49(b).

Orders Considered: P-1014, PO-2917, PO-3238 and PO-3457.

OVERVIEW:

[1] The Ministry of Community and Social Services (the ministry) received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act* or *FIPPA*) for access to an identified Family Responsibility Office (FRO) file.

[2] Specifically, the requester sought access to copies of any and all information "regarding arrears and payment schedules and assessments of support payments, for family support payments made from 1999 to present." The requester indicated that this included, but was not limited to:

> … working papers, issued and entered court orders for support and for garnishment, writs of seizures, liens, audit reports, FRO authorized recipient withdrawals, legal forms and judgments, and correspondence with all interested third parties (including Canada Revenue Agency - CRA, my income source(s) [named entity], FRO and the recipient or her legal representatives or other interested agency) in the form of instruction/direction and letters, written and electronic notes, etc.

[3] The ministry issued a preliminary access decision estimating a photocopying fee of $49.00 to process the request. The requester paid the fee and the ministry issued its access decision. The ministry granted partial access to the responsive records, relying on sections 49(a) (discretion to refuse requester's own information), in conjunction with sections 14(1)(e) (endanger life or safety), 19 (solicitor-client privilege) and 20 (danger to health or safety)[1] as well as 49(b) (personal privacy) and 65(6)3 (labour relations or employment related matters) of the *Act* to deny access to the portion it withheld.

[4] The requester (now the appellant) appealed the ministry's decision.

[5] The appellant declined mediation. The matter was then moved to the adjudication stage of the appeals process where an adjudicator conducts an inquiry under the *Act*.

[6] I commenced my inquiry by seeking representations from the ministry, the Ministry of Government Services (MGS), a bargaining agent (the bargaining agent) representing most of the employees of FRO and an individual whose interests may be affected by disclosure of the information (the affected party) on the facts and issues set out in a Notice of Inquiry.

[7] As I did in the appeal that resulted in order PO-2917[2], I asked MGS and the bargaining agent to focus their submissions in this appeal on the following:

- the impact of any Grievance Settlement Board (GSB) Order on the issues in the appeal,
- whether section 65(6)3 operates to exclude the names of FRO employees that appear in the responsive records from the scope of the *Act*, and,
- whether the names of employees found in the responsive records qualifies as their personal information.

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[1] In the course of adjudication, the ministry confirmed that although its decision letter had also referred to section 22 (currently available to the public), this was done in error. The application of section 22 of the *Act* is not at issue in this appeal.

[2] Which raised similar issues to the ones before me in this appeal and was at the time under judicial review.

[8] The ministry, MGS and the bargaining agent provided responding submissions. The affected party objected to the disclosure of any of their personal information.

[9] I then sent a Notice of Inquiry to the appellant accompanied by the non-confidential representations of the ministry, MGS and the bargaining agent. The appellant provided responding representations.

[10] I then decided to place the appeal on hold pending a determination of the Judicial Review of Order PO-2917 by the Divisional Court of Ontario. That judicial review addressing another appeal, challenged my determination to release the names of FRO employees, but did not challenge the other determinations in that order regarding whether the personal information of identifiable individuals, including the appellant in that appeal, should be withheld or disclosed.

[11] In *Ministry of Community and Social Services v. Doe*[3], the Ontario Divisional Court upheld my determinations regarding the names of FRO employees in Order PO-2917. However, the Ontario Court of Appeal granted leave to appeal the Ontario Divisional Court decision. In *Ontario (Community and Social Services) v. John Doe*[4], the Court of Appeal ultimately dismissed the appeal. As a result of the Court of Appeal's determination, the ministry decided not to withhold the employee names at issue in this appeal. The ministry also provided amended representations. As set out in its amended representations, the ministry is now only relying on sections 49(a) (in conjunction with section 19) and 49(b) of the *Act* to withhold the remaining withheld information.

[12] I then sent the appellant and the affected party a revised Notice of Inquiry. I also invited MGS and the bargaining agent to advise me of their position on this appeal in light of the Court of Appeal's decision in *Ontario (Community and Social Services) v. John Doe*. Neither the appellant nor the affected party provided responding representations. MGS and the bargaining agent provided their positions on disclosure. Shortly thereafter, the ministry issued a revised decision letter to the appellant disclosing additional information to him, which included FRO employee names. Accordingly, that information is no longer at issue in the appeal.

[13] In response to a telephone inquiry from this office, the appellant advised that he never received the revised Notice of Inquiry. Accordingly, I sent a Supplementary Notice of Inquiry to the appellant accompanied by a copy of the ministry's amended representations. The appellant did not provide any responding representations.

[14] In this order I uphold the ministry's decisions and dismiss the appeal.

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[3] 2014 ONSC 239.
[4] 2015 ONCA 107.

RECORDS:

[15] The records at issue in this appeal are from an identified FRO file. The ministry set out its position regarding the information at issue in a detailed index that was sent to the appellant along with the ministry's revised decision letter.

ISSUES:

A. Do the records 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(a), in conjunction with section 19, apply to the information for which it is claimed?

C. Does the discretionary exemption at section 49(b) apply to the balance of the information remaining at issue in the appeal?

DISCUSSION:

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

[16] 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;

[17] 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.[5]

[18] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.[6]

[19] Section 48(1) sets out the access procedure applicable to requests for an individual's own personal information. Section 49 provides a complete list of exemptions to be applied where an individual has requested access to his or her own personal information. All of the exemptions in section 49 are discretionary. Sections 49(a) and (b) state as follows:

> A head may refuse to disclose to the individual to whom the information relates personal information,
>
> (a) 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]; or
>
> (b) where the disclosure would constitute an unjustified invasion of another individual's personal privacy.

[20] The ministry submits that the records contain the personal information of the support recipient that the support recipient provided to FRO for the purposes of enforcing a support order filed with the Director of FRO (the Director). The ministry submits that the information provided by the support recipient is highly confidential and

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[5] Order 11.
[6] Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

sensitive in nature and falls within the ambit of personal information as defined by section 2(1).

[21] In the circumstances of this appeal, because of the manner in which the request by the appellant is framed, and the fact that the information is found in a file that pertains to the appellant, I find that all the records contain the personal information of the appellant. This personal information includes his age, his home address and other personal information about him. I also find that all the records remaining at issue contain the affected party's personal information, including the affected party's age, home address and other personal information about the affected party. Some records also contain references to other identifiable individuals which qualifies as their personal information.

[22] I will first address whether section 49(a), in conjunction with section 19, applies to the information for which it is claimed. Then I will consider whether section 49(b) of the *Act* applies to the balance of the information at issue.

Issue B: Does the discretionary exemption at section 49(a), in conjunction with section 19, apply to the information for which it is claimed?

[23] Under section 49(a) of the *Act*, where a record contains the personal information of the appellant and section 19 would apply to the disclosure of that information, the ministry may refuse to disclose that information to the appellant.

[24] The ministry submits that section 19 applies to the Panel Lawyer Report at pages 317 and 318 and the transcription of the Panel Lawyer Report at page 12 of the Case Log Report.

[25] Section 19 of the *Act* states as follows:

> A head may refuse to disclose a record,
>
> (a) that is subject to solicitor-client privilege;
>
> (b) that was prepared by or for Crown counsel for use in giving legal advice or in contemplation of or for use in litigation; or
>
> (c) that was prepared by or for counsel employed or retained by an educational institution or a hospital for use in giving legal advice or in contemplation of or for use in litigation.

[26] Section 19 contains two branches. Branch 1 ("subject to solicitor-client privilege") is based on the common law. Branch 2 (prepared by or for Crown counsel or counsel employed or retained by an educational institution or hospital) is a statutory privilege. The institution must establish that one or the other (or both) branches apply.

Branch 1: common law privilege

[27] At common law, solicitor-client privilege encompasses two types of privilege: (i) solicitor-client communication privilege; and (ii) litigation privilege.

Solicitor-client communication privilege

[28] Solicitor-client communication privilege protects direct communications of a confidential nature between a solicitor and client, or their agents or employees, made for the purpose of obtaining or giving professional legal advice.[7] The rationale for this privilege is to ensure that a client may freely confide in his or her lawyer on a legal matter.[8] The privilege covers not only the document containing the legal advice, or the request for advice, but information passed between the solicitor and client aimed at keeping both informed so that advice can be sought and given.[9]

[29] Confidentiality is an essential component of the privilege. Therefore, the institution must demonstrate that the communication was made in confidence, either expressly or by implication.[10] The privilege does not cover communications between a solicitor and a party on the other side of a transaction.[11]

Litigation privilege

[30] Litigation privilege protects records created for the dominant purpose of litigation. It is based on the need to protect the adversarial process by ensuring that counsel for a party has a "zone of privacy" in which to investigate and prepare a case for trial.[12] Litigation privilege protects a lawyer's work product and covers material going beyond solicitor-client communications.[13] It does not apply to records created outside of the "zone of privacy" intended to be protected by the litigation privilege, such as communications between opposing counsel.[14] The litigation must be ongoing or reasonably contemplated.[15]

Branch 2: statutory privileges

[31] Branch 2 is a statutory privilege that applies where the records were prepared by

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[7] *Descôteaux v. Mierzwinski* (1982), 141 D.L.R. (3d) 590 (S.C.C.).
[8] Orders MO-1925, MO-2166 and PO-2441.
[9] *Balabel v. Air India*, [1988] 2 W.L.R. 1036 at 1046 (Eng. C.A.).
[10] *General Accident Assurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321 (C.A.); Order MO-2936.
[11] *Kitchener (City) v. Ontario (Information and Privacy Commissioner)*, 2012 ONSC 3496 (Div. Ct.)
[12] *Blank v. Canada (Minister of Justice)* (2006), 270 D.L.R. (4th) 257 (S.C.C.) (also reported at [2006] S.C.J. No. 39).
[13] *Ontario (Attorney General) v. Ontario (Information and Privacy Commission, Inquiry Officer)* (2002), 62 O.R. (3d) 167 (C.A.).
[14] *Ontario (Ministry of Correctional Service) v. Goodis*, 2008 CanLII 2603 (ON SCDC).
[15] Order MO-1337-I and *General Accident Assurance Co. v. Chrusz,* cited above; see also *Blank v. Canada (Minister of Justice)*, cited above.

or for Crown counsel or counsel employed or retained by an educational institution or hospital "for use in giving legal advice or in contemplation of or for use in litigation." The statutory exemption and common law privileges, although not identical, exist for similar reasons.

Representations of the ministry

[32] The ministry submits that the lawyers at FRO are employees of the Ministry of the Attorney General and work in-house as counsel for the Director and his staff. As well, they state that the Director also retains private sector lawyers as counsel.[16] The ministry submits that the records produced by FRO lawyers at the request of the Director and his staff, including reports to the Director and his staff, are subject to common law solicitor-client privilege.

[33] The ministry takes the position that there is both an express and implied understanding that the solicitor and client communications at issue in this appeal were made in confidence and that this privilege has not been waived.

[34] It submits:

> … The Panel Lawyer Report was prepared by the FRO lawyer to report back to the client (FRO and its employees) about the status of litigation. The Panel Lawyer Report was then transcribed to ensure that the information was available to the client (the Director and FRO employees) on the Case Log. There is also an implied understanding of confidentiality in all solicitor and client communication at FRO, which covers the content of telephone conversations and informal communications between the Legal Services Branch and the Director or FRO employees.
>
> The maintenance of the confidentiality surrounding the above-mentioned records is essential to the solicitor and client relationship, in which the client must be able to confide in his or her lawyer on a legal matter without reservation. Accordingly, the Director opposes the disclosure of records which contain communication of a confidential nature between the Legal Services Branch and Director and his employees.

[35] The ministry adds that the information is subject to litigation privilege:

> The Director and the Legal Services Branch often prepare materials including Panel Lawyer Reports and Case Log Notes to aid in the conduct of litigation. As the Director is still enforcing the support payor's support order, there is still a possibility that the Director will be involved in further

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[16] The ministry submits that the solicitor-client relationship in both scenarios was confirmed by the Divisional Court in *Ministry of Community and Social Services v. Cropley et al.* (2004), 70 O.R. (3d) 680.

> litigation with the support payor and accordingly litigation privilege cannot be said to have terminated. …

[36] The ministry also takes the position that the information is subject to the statutory solicitor-client communication privilege because it reflects communications between FRO in-house counsel and the Director and his employees and were "prepared by or for Crown counsel for use in giving legal advice."

[37] It submits that the Panel Lawyer Report and corresponding Case Log Note:

> … were prepared by Crown counsel in FRO's Legal Services Branch for the purpose of conveying legal advice, namely the FRO in-house lawyer is providing direction to his client (FRO staff) on how the case should enforced.

[38] The ministry takes the position that the records at issue are also subject to statutory litigation privilege as they were prepared by or for Crown counsel "in contemplation of or for use in litigation." It states that the Panel Lawyer Report and the Case Log Note were prepared by FRO in-house counsel to report the results of a motion that was brought by the support payor, and to provide direction to his client (FRO staff) on how the case should enforced.

Representations of the appellant

[39] The appellant's representations do not specifically address the particular elements to establish the application of sections 19(a) or 19(b) of the *Act*, but reflect his frustration in obtaining information from FRO about his file, his concern that he was not treated fairly by FRO in the course of its file administration, and that his income and "tax account" were subject to garnishment. He questions the accountability and responsiveness of FRO and takes issue with FRO "claiming the solicitor-client privilege to cover up this kind of practice".

Analysis and findings

[40] I find that the Panel Lawyer Report at pages 317 and 318 of the records and the transcription of the Panel Lawyer Report at page 12 of the Case Log Report fall within the scope of section 19(a) of the *Act* because disclosure of this information would reveal the nature of the legal opinion sought and provided in the context of a confidential solicitor-client communication or would reveal the substance of the legal opinion provided. I am satisfied that no waiver of privilege has occurred with respect to this information. Accordingly, I find that this information qualifies for exemption under

section 49(a) of the *Act* in conjunction with section 19(a)[17].

[41] I will now address the remaining information at issue in this appeal.

Issue C: Does the discretionary exemption at section 49(b) apply to the balance of the information remaining at issue in the appeal?

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

[43] For records claimed to be exempt under section 49(b) (i.e., records that contain the requester's personal information), 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.[18]

[44] Sections 21(2) and (3) of the *Act*, read, in part:

> (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,
>
> > (a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny;
> >
> > (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
> >
> > (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
> >
> > (f) the personal information is highly sensitive;
> >
> > (h) the personal information has been supplied by the individual to whom the information relates in confidence;
>
> (3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

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[17] In light of this finding it is not necessary for me to consider whether the withheld information also qualifies for exemption under section 49(a) in conjunction with section 19(b).
[18] Order MO-2954.

> (c) relates to eligibility for social service or welfare benefits or to the determination of benefit levels;
>
> (d) relates to employment or educational history; or
>
> (f) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness.

[45] The ministry submits that the remaining withheld information falls under the presumption at sections 21(3)(c), (d) and (f) of the *Act* because:

> (c) financial information provided by the support recipient may reveal eligibility for social services or welfare benefits (see pages 62-109 which shows whether the support recipient or the assignee [social services] received support payments);
>
> (d) correspondence provided by the support recipient may reveal employment or educational history (see support recipient correspondence);
>
> (f) correspondence provided by the support recipient may reveal information about her finances, income, assets, liabilities, net worth, bank balances, financial history or activities (pages 62-109 as described above, as well as other support recipient correspondence).

[46] In addition, the ministry states that the factors at sections 21(2)(d), (e), (f) and (h) were also considered.

[47] With respect to the application of section 21(2)(d), the ministry takes the position that the withheld personal information is not relevant to a fair determination of rights affecting the appellant, submitting that:

> … Any issues of entitlement to support that may exist between the parties may be resolved without using the personal information contained within the FRO file. Information relating to the entitlement to support in the Director's possession has already been provided to the appellant, albeit with some irrelevant personal information severed, such as the support recipient's address.

[48] With respect to the application of section 21(2)(e), the ministry submits that:

> … while the Director is not aware of the nature of this support recipient and appellant's relationship, given the overall sensitivity of the issues the Director is involved with, the disclosure of the support recipient's personal

> information may indeed expose the support recipient to pecuniary or other harm.

[49] Regarding 21(2)(f), the ministry submits that:

> … while the Director is not aware of the nature of this support recipient and appellant's relationship, given the overall sensitivity of the issues the Director is involved with, the personal information of the support recipient should be treated as highly sensitive and disclosure of same could reasonably be expected to cause significant personal distress to the support recipient and/or children.[19]

[50] With respect to section 21(2)(h), the ministry submits that the information in question has been supplied by the support recipient in confidence to the Director for the purposes of enforcing the support order.[20]

[51] The appellant's representations do not specifically address any particular presumption or factor but, as set out above, reflect his frustration in obtaining information from FRO about his file and his concern that he was not treated fairly by FRO in the course of its file administration. He states that:

> … I have suffered serious pecuniary harm, and need to review what my former employer or its agents have provided to FRO. … I did not authorize the employer to send my personal information to FRO.

[52] He submits that the withholding of information impeded his ability to deal with FRO's garnishment of his pension.

[53] He further submits:

> Not only did FRO cancel my payment agreement when I was not in default, but knowing my financial circumstances they advised the recipient to unilaterally withdraw and sue me, with FRO enforcing one order, and the recipient in parallel suing me while accepting payments via FRO. When I requested confirmation from FRO that the Minister of Social Services had authorized this as stated on the unilateral withdrawal form, the FRO refused to provide the signed authorized confirmation. …
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> … FRO has had responsibility for all court orders made in my case. FRO has a responsibility to ensure that the court orders are legitimate and

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[19] In support of this submission the ministry relies on Orders P-1056, P-1198, P-1269 and P-1340.
[20] In support of this submission the ministry relies on Orders P-1056, P-1198, P-1269 and P-1340.

> correct, and provide me with a true copy from my file. To suppress the contents of my file is unfair. …
>
> …
>
> I need FRO to come clean with respect to disclosure of all issued and entered Court Orders, including any made without requiring my consent, on which the statement of arrears are based; and on issued and entered eviction orders and writ of seizures that pertain to me in connection with these matters … . All Court Orders made in regard to me as a support payor were to be under the jurisdiction of FRO. … I wish that FRO produce the Court Orders from their files supporting these actions.
>
> …
>
> I have suffered pecuniary and other emotional and reputation harm in losing my employment and have been sued by the support recipient. I should have the right to obtain and examine information FRO collected about me, because it could be used by FRO in a way to reflect on my reputation and personality as a parent, as a husband, and a provider and in future FRO litigation against me.
>
> …
>
> … When FRO permitted unilateral withdrawal of the support recipient from a payment schedule agreement to sue me and evict me from my home, my income source [named company], were instructed by FRO to stop deducting support payments, even though I had an outstanding balance. I had made an agreement with FRO, and I was not in arrears with respect to that agreement. …
>
> I was sued by the support recipient and was under an eviction order because of arrears, and FRO claimed they had no knowledge of the order which was made without my consent. Now FRO has accepted the recipient's case again and is garnishing my … pensions. …
>
> Where is the accountability and responsiveness of the FRO. This exercise of discretion is unfair … .

[54] With respect to the support recipient specifically, the appellant submits that he is not aware of the content or age of the records pertaining to her health and financial information but that he needs information pertaining to her employment status and whether she is drawing ODSP benefits. He submits that the support recipient:

> … has in the course of time since the separation agreement, been fully compensated with respect to the division of property, pension and assets.

> I need appropriate disclosure concerning the support recipient's personal information.

[55] As set out in the background above, the affected party objected to the release of any information.

The presumptions in section 21(3)

Sections 21(3)(c), (d) and (f)

[56] In my view the presumption at section 21(3)(f) applies to the personal information in a great number of records at issue in this appeal because they contain financial information that pertains to the affected party.[21] I find that this information satisfies the requirements of section 21(3)(f) and its disclosure is presumed to constitute an unjustified invasion of the affected party's personal privacy. Accordingly, it is not necessary for me to also consider whether this information also falls within the sections 21(3)(c) and (d) presumptions.

The factors and circumstances in section 21(2)

[57] The appellant does not specifically refer to the application of section 21(2)(a), however his representations discuss his concerns about FRO's conduct in administering the file. I interpret this as a submission that disclosure of the information would be desirable for the purpose of subjecting the activities of FRO to public scrutiny, a factor listed in section 21(2)(a). In addition to the factor listed in section 21(2)(a), the appellant's submissions also appear to raise another unlisted circumstance that is often considered in balancing access and privacy interests under section 21(2) in matters of this nature, i.e. that "the disclosure of the personal information could be desirable for ensuring public confidence in the integrity of the institution."

[58] In Order P-1014, Adjudicator John Higgins considered the possible application of section 21(2)(a) to a request for information by an individual who had been accused of workplace harassment. The requester in that case sought access to various records created or obtained in relation to the investigation of the harassment allegation. Adjudicator Higgins wrote:

> The objective of section 21(2)(a) is to ensure an appropriate degree of scrutiny by the public. In my view, there is public policy support for proper disclosure in proceedings such as [Workplace Discrimination and Harassment Policy (WDHP)] investigations, as evidenced by the rules of natural justice. For this reason, I agree with the appellant that an appropriate degree of disclosure to the parties involved in WDHP investigations is a matter of considerable importance. I will return to this

[21] See in this regard the discussion in Orders PO-3238 and PO-3457.

> issue under the heading "Public Confidence in the Integrity of an Institution", below.
>
> However, as regards section 21(2)(a), it is my view that the interest of a party to a given proceeding in disclosure of information about that proceeding is essentially a private one. The appellant is not arguing that the public should be able to scrutinize these records. Rather, he seeks to review them himself, in order to ensure that justice was done in this particular investigation, in which he was personally involved. For this reason, I find that section 21(2)(a) does not apply in the circumstances of this appeal.

[59] In my view, similar considerations arise here, and based on the reasoning in Order P-1014, which also applies in this case, I find that section 21(2)(a) does not apply.

[60] For similar reasons, I am also not satisfied that releasing the withheld personal information could be desirable for ensuring public confidence in the integrity of the institution. The interests at play in this appeal are essentially private. Releasing the balance of the information will not assist in ensuring *public* confidence in the integrity of FRO. In all the circumstances of this case, I am not satisfied, on the evidence before me that this factor applies.

[61] For section 21(2)(d) to apply, the appellant must establish that:

1. the right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds; and

2. the right is related to a proceeding which is either existing or contemplated, not one which has already been completed; and

3. the personal information which the appellant is seeking access to has some bearing on or is significant to the determination of the right in question; and

4. the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing. [22]

[62] I am not persuaded by the evidence provided by the appellant that the disclosure of personal information of individuals that the ministry withheld is required to prepare for any existing or contemplated proceeding or to ensure an impartial hearing.

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[22] Order PO-1764; see also Order P-312, upheld on judicial review in *Ontario (Minister of Government Services) v. Ontario (Information and Privacy Commissioner)* (February 11, 1994), Toronto Doc. 839329 (Ont. Div. Ct.).

I therefore find that the withheld information is not relevant to a fair determination of rights affecting the person who made the request. Accordingly, this factor does not apply.

Adequate degree of disclosure

[63] In Order P-1014, Adjudicator Higgins also discussed a circumstance favouring the disclosure of personal information that has been subsequently considered in appeals of this nature, which he referred to as an "adequate degree of disclosure." He explained:

> This factor … relates to the fairness of administrative processes, and the need for a degree of disclosure to the parties which is consistent with the principles of natural justice.
>
> In this case, in the context of an administrative proceeding which has had serious consequences for the appellant, a number of witness statements which the investigator considered in reaching his decision were entirely withheld from the appellant. Others were partially withheld.
>
> In upholding the Inquiry Officer's finding in Order M-82, the Divisional Court stated that, without adequate disclosure, "the complainant might be left wondering whether his complaint had been properly investigated". In my view, adequate disclosure is a fundamental requirement in a proceeding such as a WDHP investigation. Both the complainant and the respondent in such a proceeding are entitled to a degree of disclosure which permits them to understand the finding that was made and the reasons for the decision.
>
> In a similar vein, individuals such as the appellant, who face accusations which result in administrative or judicial proceedings, are entitled to know the case which has been made against them.
>
> In the circumstances of this appeal, I find that the factor requiring adequate disclosure applies to the personal information in the records (including the undisclosed witness statements) which is directly related to the subject matter of the investigation, the investigator's findings and the Ministry's final disposition of the matter.

[64] The ministry explains that:

> While the Director of FRO does have a heightened sensitivity to the disclosure of personal information of third parties, some personal information provided by support recipients must be shared with support payors in order to fulfil the Director's statutory duty to enforce support orders. Namely, the Director of FRO must disclose to support payors a

> record called the "Statement of Arrears" (SOA) which is submitted by support recipients. The SOA is a sworn document submitted by support recipients to have the FRO enforce support payable on account of arrears owing by support payors prior to the order being filed with FRO. The support recipient in this matter historically submitted a few different versions of her SOA in her confidential communications with FRO, however only the version that FRO relied upon was forwarded by FRO to the support payor; this explains why FRO withheld some versions of the [support recipient] SOA, but not all versions.

[65] In my view, this is a relevant consideration in the appeal before me. In order to determine what weight to give to this unlisted circumstance, I have reviewed the information at issue, as well as the other documentation in the appeal file. In my view, certain records do contain information that falls within the scope of this unlisted circumstance. The weight to be assigned to this unlisted circumstance favouring disclosure varies depending on the nature of the information at issue. For the most part, I have assigned moderate weight to this circumstance where it is applicable.

The factors and circumstances which favour privacy protection

[66] In order for section 21(2)(e) to apply, the evidence must demonstrate that the damage or harm envisioned is present or foreseeable, and that this damage or harm would be "unfair" to the individual involved.

[67] In my view, even if it could be established that release of the personal information would expose the individual to whom the information relates to pecuniary or other harm, I am not satisfied, in the circumstances of this case, that this harm would be *unfair*, as is required. Accordingly, I do not find the factor at section 21(2)(e) to be relevant in the circumstances of this appeal.

[68] To be considered highly sensitive under section 21(2)(f), there must be a reasonable expectation of significant personal distress if the information is disclosed.[23]

[69] In enforcing support orders, the Director acts as a conduit through which monies flow in order to help minimize the contact between support payors and recipients in recognition of the often acrimonious and adversarial nature of relationships where FRO is involved as a payment facilitator. In my view, in this context, certain information about individuals that is held by the Director is inherently highly sensitive. Moreover, I accept that in order for the Director to effectively enforce support orders, the parties to the FRO process must be able to communicate without the fear that the other party will have access to the kind of highly sensitive information that may be reflected in those communications.

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[23] Orders PO-2518, PO-2617, MO-2262 and MO-2344.

[70] In the circumstances of this appeal, I find that disclosure of some of the withheld personal information would result in a reasonable expectation of significant personal distress. In my view, this factor weighs in favour of protection of privacy for some of the records, and I assign it moderate weight.

[71] Section 21(2)(h) 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.[24]

[72] As set out above, in order for the Director to effectively enforce support orders, the parties to the FRO process must be able to communicate without the fear that the other party will have access to this highly sensitive information, and accordingly, this would give rise to a reasonable expectation that some information would be treated confidentially. However, as discussed above, the ministry also submits that:

> While the Director of FRO does have a heightened sensitivity to the disclosure of personal information of third parties, some personal information provided by support recipient[s] is shared with support payors in order to fulfil the Director's statutory duty to enforce support orders.

[73] I am prepared to accept that, in light of the context and the circumstances surrounding the provision of certain personal information in the records, that it would be subject to a degree of confidentiality under section 21(2)(h). I also note, however, that this is attenuated somewhat by virtue of the ministry's submission that its practice is to share some personal information with support payors. Balancing these considerations, and in light of the circumstances surrounding the context and nature of the information provided, I find that section 21(2)(h) carries moderate weight in favour of privacy protection with respect to some of the personal information in the records.

Balancing of the factors and circumstances

[74] In balancing the interests of the affected party to privacy protection against the appellant's interests in disclosure, I find that the presumption in section 21(3)(f) and the factors in sections 21(2)(f) and/or (h) outweigh the unlisted circumstance of adequate degree of disclosure for the personal information remaining at issue in the appeal. I make this finding in part, because of the extent of the information FRO decided to disclose to the appellant, and in part, because of information that is reflected in the records at issue in this appeal, which I cannot reveal without disclosing the contents of the records. I therefore find that disclosure of the remaining withheld personal information would be an unjustified invasion of personal privacy under section 49(b).

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[24] Order PO-1670.

[75] In making my findings with respect to the application of sections 49(a) and 49(b) above, I am of the view that any personal information that I have found to be subject to the sections 49(a) and 49(b) exemptions cannot be disclosed without resulting in disclosure of "disconnected snippets," or "worthless," "meaningless" or "misleading" information or also disclosing the information that I have found to qualify for exemption.[25]

[76] Finally, based on my review of the information that I have determined to qualify for exemption under sections 49(a) and (b), and the overall circumstances of the matter including the sensitivity of the context and the nature of the information gathered for FRO enforcement matters, I am satisfied that the ministry properly exercised its discretion with respect to the information that I have found to be exempt under sections 49(a) and (b) of the *Act*.

ORDER:

I uphold the ministry's decisions and dismiss the appeal.

Original Signed by: January 3, 2017
Steven Faughnan
Adjudicator

[25] See, in this regard *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner)* (1997), 102 O.A.C. 71 (Div. Ct.).