

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-3683

Appeal PA16-102

Family Responsibility Office

January 9, 2017

Summary: The Family Responsibility Office (FRO) received a request under the *Freedom of Information and Protection of Privacy Act (FIPPA)* for documentation in regards to an estate of a deceased individual. FRO issued a decision denying access to the responsive record pursuant to the mandatory personal privacy exemption in section 21(1) of *FIPPA*. This order upholds FRO's decision.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 2(1) (definition of personal information), 21(1), 21(3)(f).

OVERVIEW:

[1] The Family Responsibility Office (FRO) received a request under the *Freedom of Information and Protection of Privacy Act (FIPPA or the Act)* for the following information:

A copy of all of the requested documentation to FRO in regards to the estate of [named individual] and the executor [named individual] had to submit no later than [date] with also [named individual] who stated he would use his inheritance from his mother [named individual] to satisfy his child support arrears. All documentation was to be sent to the attention of [named individual] at the F.R.O. Office.

[2] FRO issued a decision denying access to the responsive record. Access was

denied to the withheld information pursuant to the discretionary exemptions in sections 19 (solicitor-client privilege) and 49(b) (personal privacy) of the *Act*.

[3] The requester (now the appellant) appealed FRO's decision.

[4] During mediation, the mediator noted that the information withheld in the record did not appear to contain the personal information of the appellant, but only the personal information of eleven other individuals (the affected persons). The mediator discussed this with FRO who confirmed that section 49(b) of the *Act* does not apply and instead the mandatory personal privacy exemption in section 21(1) applies.

[5] FRO advised that the affected persons were not notified of the appellant's request.

[6] The mediator discussed the possibility of notifying the affected persons with the appellant. The appellant advised the mediator that she did not want the affected persons to be notified. The appellant believes that the withheld information should be disclosed to her without consent.

[7] No further mediation was possible. Accordingly, this file was transferred to the adjudication stage of the appeals process where an adjudicator conducts an inquiry.

[8] Representations were sought and exchanged between FRO and the appellant in accordance with section 7 of the IPC's¹ *Code of Procedure* and *Practice Direction 7*.

[9] In this order, I uphold FRO's decision that the record is exempt under section 21(1).

RECORD:

[10] At issue is a letter with enclosures sent to FRO from the counsel for the executor of the estate containing information about a deceased's estate (the deceased).

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 mandatory personal privacy exemption at section 21(1) apply to the information at issue?

¹ The Information and Privacy Commissioner, Ontario, Canada.

DISCUSSION:

A. Does the record contain “personal information” as defined in section 2(1) and, if so, to whom does it relate?

[11] 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;

[12] 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.²

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

(2) Personal information does not include information about an individual who has been dead for more than thirty years.³

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

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

[14] 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.⁴

[15] 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.⁵

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

[17] FRO states⁷ that in order to fulfil its statutory mandate of enforcing support orders, FRO collects personal information about support payers. This information is collected either directly from the support payer, or from another source, as in this case, as permitted under the *Family Responsibility and Support Arrears Enforcement Act, 1996* (the *FRSAEA*) and *FIPPA*. It states:

FRO staff are often unaware of the volatility of the relationships that may exist between support payers and support recipients. Given the nature of

² Order 11.

³ In this appeal, the deceased has not been dead for more than 30 years.

⁴ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

⁵ Orders P-1409, R-980015, PO-2225 and MO-2344.

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

⁷ FRO provided both confidential and non-confidential representations. In this order, I will only be referring to its non-confidential representations.

the parties' relationship (i.e., separated couples whose relationship is one that is often adversarial and acrimonious, and sometimes involves domestic violence), even the mere fact that a party has contacted FRO should be considered their respective personal information. Even where there is no specific indication of domestic violence involving the parties in a FRO file, that does not mean that it is not a concern in the case. As a result, any information provided to FRO by either party should be considered highly sensitive and confidential.

[18] FRO states that a Notice of Garnishment was issued against the estate of the deceased to attempt to collect support payments owed to the appellant in accordance with the Director's statutory duty to enforce support orders. It describes the record as a letter with enclosures sent by a lawyer for the executor of the estate in order to respond to the Notice of Garnishment, which was provided to FRO to assist it in making a determination that there were no assets owing to the support payer from the estate that would be captured by the Notice of Garnishment.

[19] FRO submits that the record contains the personal information of the support payer and multiple affected individuals including address and contact information, financial information and confidential correspondence.

[20] FRO states that the personal information was provided to it on behalf of one of the named individuals for the purposes of responding to attempts to enforce a support order filed with FRO and includes the types of personal information set out in paragraphs (b), (c) and (f) of the definition of that term in section 2(1).

[21] The appellant did not provide representations on whether the record contains personal information.

Analysis/Findings

[22] I agree with FRO that the record contains personal information of individuals other than the appellant. The record is a letter sent in confidence to FRO about the estate, with attachments. Specifically, the record contains information relating to financial transactions in which individuals have been involved,⁸ identifying numbers or other particulars assigned to individuals,⁹ and correspondence sent to FRO by an individual that is explicitly of a confidential nature.¹⁰ All of this is personal information of individuals other than the appellant in their personal capacity in accordance with the definition of that term in section 2(1).

⁸ In accordance with paragraph (b) of the definition of personal information in section 2(1).

⁹ In accordance with paragraph (c) of the definition of personal information in section 2(1).

¹⁰ In accordance with paragraph (f) of the definition of personal information in section 2(1).

[23] I am also satisfied that the records do not contain the personal information of the appellant. Although the appellant may have an interest in the records as they relate to attempts to enforce support payments to her, the records themselves do not contain the personal information of the appellant as defined in the *Act*.

[24] I will now consider whether the mandatory personal privacy exemption applies to the record.

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

[25] 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.

[26] The section 21(1)(a) to (e) exceptions are relatively straightforward. The section 21(1)(f) exception, allowing disclosure if it would not be an unjustified invasion of personal privacy, is more complex, and requires a consideration of additional parts of section 21.

[27] If the information fits within any of paragraphs (a) to (e) of section 21(1) or paragraphs (a) to (d) of section 21(4), it is not exempt from disclosure under section 21. In this appeal, these paragraphs do not apply.

[28] Under section 21(1)(f), if disclosure would not be an unjustified invasion of personal privacy, it is not exempt from disclosure.

[29] Sections 21(2) and (3) help in determining whether disclosure would or would not be an unjustified invasion of privacy.

[30] If any of paragraphs (a) to (h) of section 21(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 21. Once established, a presumed unjustified invasion of personal privacy under section 21(3) can only be overcome if section 21(4) or the "public interest override" at section 23 applies.¹¹

[31] In this appeal, FRO relies on the presumption in section 21(3)(f), which reads:

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

¹¹ *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.).

describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness.

[32] FRO states that the personal information at issue in this appeal fits squarely within section 21(3)(f) because it describes individuals' finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness.

[33] To qualify under this section, information about an asset must be specific and must reveal, for example, its dollar value or size.¹²

[34] The appellant did not address this issue in her representations. Instead her representations focus on why she wants access to the record, which concerns the estate of the deceased who was not her relative. She is seeking information about this estate. In particular, she wants to find out if there are assets in the estate from which she could collect support payments from a relative of the deceased.

Analysis/Findings

[35] The record contains detailed information about the deceased's estate and includes detailed information about the deceased and other individuals' finances, assets, liabilities, net worth, bank balances, and financial history or activities. I find that the personal information in the record is subject to the presumption in section 21(3)(f).

[36] As stated above, a presumed unjustified invasion of personal privacy under section 21(3)(f) can only be overcome if section 21(4) or the "public interest override" at section 23 applies. In this appeal, section 21(4) does not apply and the public interest override in section 23 has not been raised.

[37] Accordingly, as the presumption in section 21(3)(f) applies, I find that the record is exempt under the mandatory personal privacy exemption in section 21(1).

[38] As I have found that the record is exempt under the mandatory section 21(1) exemption, it is not necessary for me to consider whether it is also exempt under the discretionary solicitor-client exemption in section 19.

ORDER:

I uphold FRO's decision and dismiss the appeal.

Original Signed by: _____
Diane Smith

January 9, 2017

¹² Order PO-2011.

Adjudicator