

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-4015

Appeal PA19-00075

Ministry of Children, Community and Social Services

December 11, 2019

Summary: The Ministry of Children, Community and Social Services (the ministry) received an access request under the *Freedom of Information and Protection of Privacy Act* for copies of invoices for at-home services provided to the appellant's adult son. The ministry denied access to the records in full citing the application of the mandatory personal privacy exemption in section 21(1).

In this order, the adjudicator finds that the records contain the appellant's personal information and the relevant personal privacy exemption is the discretionary personal privacy exemption in section 49(b). She finds that the records are exempt under section 49(b). She also finds that the appellant does not have a right to access his son's personal information under section 66(b), as the appellant is not the attorney or guardian of his son within the meaning of that section.

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"), 49(b), 21(3)(a), 21(3)(f), and 66(b).

OVERVIEW:

[1] The Ministry of Children, Community and Social Services (the ministry) received an access request under the *Freedom of Information and Protection of Privacy Act* (*FIPPA* or the *Act*) for copies of applications and invoices for at-home services involving the requester's son from April 2011 until the date of the request in December 2018.

[2] The ministry located records responsive to the request and denied access, in full,

under the mandatory personal privacy exemption in section 21(1) of the *Act*.

[3] The requester (now appellant) appealed the ministry's decision to this office.

[4] During mediation of the appeal, the mediator attempted to obtain consent from the requester's son's mother, the affected person, to allow the ministry to disclose records to the appellant. Consent could not be obtained from the affected person.

[5] The appellant informed the mediator that he wished to pursue the appeal at adjudication, where an adjudicator conducts an inquiry.

[6] I sought the representations of the ministry and the affected person initially. I sent the ministry's representations to the appellant and sought his representations. The affected person's representations were withheld from the appellant due to confidentiality concerns.¹ The appellant provided representations in response to the ministry's representations.

[7] In the Notice of Inquiry, I added the issue of whether the discretionary personal privacy exemption in section 49(b) applies, as the records appear to contain the personal information of the appellant.

[8] As the records appear to also contain the personal information of the appellant and the affected person's son (referred to as the son in this order), I also sought representations as to whether the appellant is entitled to exercise a right of access to his son's personal information in the records under the *Act*. The son is now over 18 years of age and is developmentally delayed. Specifically, I sought representations on the application of section 66(b), which reads:

Any right or power conferred on an individual by this Act may be exercised,

by the individual's attorney under a continuing power of attorney, the individual's attorney under a power of attorney for personal care, the individual's guardian of the person, or the individual's guardian of property;

[9] The appellant confirmed that he is not his son's attorney or guardian within the meaning of section 66(b). I was satisfied, therefore, that the appellant does not have the right to access his son's personal information under section 66(b) of the *Act* and continued with my review of the denial of access under the personal privacy exemption.

[10] In this order, I find that the records are exempt under the discretionary personal

¹ See the criteria for withholding representations in the IPC's *Practice Direction 7*.

privacy exemption in section 49(b).

RECORDS:

[11] The records at issue are invoices for services rendered to the son through the ministry's Special Services at Home Program (SSAH) and related payment information.²

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 personal privacy exemption at section 49(b) apply to the information at issue?
- C. Did the ministry exercise its discretion under section 49(b)? If so, should this office uphold the exercise of discretion?

DISCUSSION:

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

[12] 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). The ministry relies on paragraph (b) of the definition of personal information in section 2(1), which reads:

"personal information" means recorded information about an identifiable individual, including,

(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,

[13] The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) of the definition of

² The appellant provided me with the SSAH applications that were at issue in this appeal, therefore, the requested SSAH applications are no longer at issue as the appellant already has copies of these records.

personal information in section 2(1) may still qualify as personal information.³

[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

Representations

[17] The ministry states that the personal information in the records relates primarily to the son and the affected person and is related to financial transactions involving the affected person. It states that the records include invoices submitted by the affected person for reimbursement through the ministry's Special Services at Home Program (SSAH).

[18] The ministry states that the records also contain a limited amount of the appellant's personal information - specifically, the appellant's name as a secondary contact.

[19] The appellant's representations do not address the issues directly; instead, he focuses on why he wants disclosure.

Analysis/Findings

[20] The records at issue are invoices, and related payment information, for services rendered to the son through the ministry's SSAH program.

[21] The SSAH program helps families pay for special services in or outside the family home as long as the child is not receiving support from a residential program. Under this program, families can get money to pay for services that will give them a break, or

³ Order 11.

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.).

respite, from the day-to-day care of their child.⁷

[22] I agree with the ministry that the records contain the personal information of the affected person and the son. The affected person is listed on all the invoices and submitted these invoices to the ministry for payment. The invoices pertain to third party services provided to the son by the ministry. This personal information in the records is about financial transactions involving the affected person and the son for services provided under the SSAH program. I also find that the records contain the personal information of the appellant as he is listed as a secondary or alternate contact on the invoices.

[23] Therefore, I find that there is personal information about the appellant, the affected person and the son in these records according to paragraph (b) of the definition of personal information in section 2(1).

[24] As the records contain the appellant's, as well as the son's and the affected person's personal information, the relevant personal privacy exemption is not the mandatory one in section 21(1), but rather the discretionary personal privacy exemption in section 49(b). I will consider whether it applies to the records.

Issue B: Does the discretionary personal privacy exemption at section 49(b) apply to the information at issue?

[25] 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.

[26] 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. Since the section 49(b) exemption is discretionary, the institution may also decide to disclose the information to the requester.

[27] Sections 21(1) to (4) provide guidance in determining whether disclosure would be an unjustified invasion of personal privacy.

[28] If the information fits within any of paragraphs (a) to (e) of section 21(1) or paragraphs (a) to (d) of section 21(4), disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 49(b). The information does not fit within these paragraphs.

⁷ See <http://www.children.gov.on.ca/htdocs/English/specialneeds/specialservices.aspx>

[29] Sections 21(2) and (3) also help in determining whether disclosure would or would not be an unjustified invasion of personal privacy under section 49(b).

[30] In determining whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy under section 49(b), this office will consider, and weigh, the factors and presumptions in sections 21(2) and (3) and balance the interests of the parties.⁸

[31] 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 49(b). The ministry relies on the presumptions in section 21(3)(a) and (f), which read:

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

(a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;

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

Representations

[32] The ministry states that the invoices relate to the son's medical history, diagnosis, treatment and evaluation and, therefore, falls within the scope of section 21(3)(a).

[33] The ministry also states that the records include payment invoices for SSAH and approval amounts and, therefore, contain information about the affected individuals' finances and their financial history, such that the presumption in section 21(3)(f) applies.

[34] The appellant did not address this issue. As noted above, his representations focus on why he wants access to the records. He indicates that he is entitled to the information in the records as the father of the recipient of the care listed in the invoices.

Analysis/Findings

[35] The records are invoices and payment for these invoices for the provision of services under the SSAH program. The invoices reveal the specific amounts charged to

⁸ Order MO-2954.

and paid by the ministry under the SSAH program. The invoices were submitted for payment by the affected person to the ministry for the provision of services to the son and describe the affected person's financial history or activities. I find, therefore, that the presumption in section 21(3)(f) applies.

[36] The invoices relate to the medical condition of the son as the affected person is eligible for payments under the SSAH program because of the son's medical condition. While the invoices do not contain details of the son's medical condition, they relate to the son's medical condition, and I am satisfied that the presumption in section 21(3)(a) also applies.

[37] Section 21(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy.⁹ The list of factors under section 21(2) is not exhaustive. The institution must also consider any circumstances that are relevant, even if they are not listed under section 21(2).¹⁰ This section reads:

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 institution to public scrutiny;
- (b) access to the personal information may promote public health and safety;
- (c) access to the personal information will promote informed choice in the purchase of goods and services;
- (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;
- (g) the personal information is unlikely to be accurate or reliable;

⁹ Order P-239.

¹⁰ Order P-99.

(h) the personal information has been supplied by the individual to whom the information relates in confidence; and

(i) the disclosure may unfairly damage the reputation of any person referred in the record.

[38] The appellant was asked in the Notice of Inquiry if any of the section 21(2) factors apply. He was also advised in the Notice of Inquiry that in previous orders, considerations that have also been found relevant in determining whether the disclosure would be an unjustified invasion of personal privacy include:

- inherent fairness issues;¹¹
- ensuring public confidence in an institution;¹²
- personal information about a deceased person;¹³ and
- benefit to unknown heirs.¹⁴

[39] The appellant was asked if there were any other factors or other relevant circumstances that should be considered. The appellant has not identified any specific listed or unlisted factors that may apply.

[40] The records are invoices submitted to the ministry for reimbursement of the affected person for services rendered by named third parties on behalf of the son. Although the appellant has provided reasons as to why he wants disclosure, he has not identified why the reasons he has given for disclosure of the specific information in the invoices, the records at issue, should weigh in favour of disclosure of the records.

[41] The records at issue, the invoices, concern the son. The son is now over 18 years of age and has not provided consent to disclosure. As I concluded above, section 66(b) of the *Act* does not apply to permit the appellant to exercise a right of access to his son's personal information in the records, because he is not an attorney or guardian for his son within the meaning of that provision.

[42] Since the records contain the personal information of the appellant and other identifiable individuals (the affected person and the son), the factors and presumptions at sections 21(2) and 21(3) must be considered and weighed. The purpose of that exercise is to determine whether disclosing that information would be an unjustified

¹¹ Orders M-82, PO-1731, PO-1750, PO-1767 and P-1014.

¹² Orders M-129, P-237, P-1014 and PO-2657.

¹³ Orders M-50, PO-1717, PO-1923, PO-1936 and PO-2012-R.

¹⁴ Orders P-1493, PO-1717 and PO-2012-R.

invasion of the personal privacy of the identifiable individuals (other than the appellant) to whom the records relate.

[43] Because the presumptions in sections 21(3)(a) and 21(3)(f) apply (weighing against disclosure of the withheld personal information), and no factors favouring disclosure apply, and weighing the interests of the parties, I find that the personal information at issue is exempt under section 49(b). That is, I find that disclosing the information at issue, the invoices and payment information about these invoices, would be an unjustified invasion of the son's and the affected person's personal privacy.

[44] Therefore, subject to my review of the ministry's exercise of discretion, the records are exempt under section 49(b).

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

[45] 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.

[46] 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
- it fails to take into account relevant considerations.

[47] In either case, this office may send the matter back to the institution for an exercise of discretion based on proper considerations.¹⁵ This office may not, however, substitute its own discretion for that of the institution [section 54(2)].

[48] Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant:¹⁶

- the purposes of the *Act*, including the principles that
 - information should be available to the public

¹⁵ Order MO-1573.

¹⁶ Orders P-344 and MO-1573.

- 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 his or her 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
- the historic practice of the institution with respect to similar information.

Representations

[49] The ministry states that with respect to the appellant's own personal information, the appellant has only specifically sought access to information about when his name was removed as a secondary contact for the SSAH application or when the application stopped being a joint application. The ministry states that it provided this information to the appellant.

[50] The appellant queries why he would be listed as an alternate contact on the invoices if he cannot obtain copies of the records. The appellant is concerned that denial of access would not allow him to perform his duty as a father and caregiver.

Analysis/Findings

[51] Taking into account the records at issue and the ministry's representations in their entirety, I find that the ministry exercised its discretion in a proper manner, taking into account relevant considerations and not taking into account irrelevant considerations.

[52] The appellant is aware that he is listed as an alternate or secondary contact on the records. This is the only personal information of the appellant in the records.

[53] The appellant is also aware of what third party services the invoices cover, namely, respite services under the SSAH program.

[54] The appellant is concerned that denial of access would not allow him to perform his duty as a father and caregiver. The appellant has not explained how disclosure of the invoices for reimbursement to the affected person for payments made by her for third party services for the son would allow him to perform his duty as a father and a caregiver.

[55] I have found above that disclosure of the information at issue would be an unjustified invasion of the personal privacy of the affected person and the son. Neither the affected person nor the son have consented to disclosure of the records.

[56] Considering all of the evidence, and particularly that the appellant does not have a right to access the personal information of the son under section 66(b) of the *Act*, I find that the ministry properly exercised its discretion. Accordingly, I find that the records at issue are exempt under section 49(b) of the *Act*.

ORDER:

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

Original signed by _____
Diane Smith
Adjudicator

December 11, 2019 _____