



**Information and Privacy  
Commissioner/Ontario**  
**Commissaire à l'information  
et à la protection de la vie privée/Ontario**

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# **INVESTIGATION REPORT**

## **INVESTIGATION I93-056P**

### **MINISTRY OF THE ATTORNEY GENERAL**

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# INTRODUCTION

## Background of the Complaint

This investigation was initiated as a result of a complaint concerning the Ministry of the Attorney General, Family Support Plan (the FSP).

The complainant had been ordered by the Court to make support payments to his ex-wife through the FSP. The complainant believed that the FSP had provided his ex-wife with a copy of the general ledger record of his account with the FSP, and that staff of the FSP had provided her with details of his payments.

Excerpts from a letter written by the ex-wife indicated that she had received a printout of the FSP's general ledger record showing that the support payments were being paid sometimes by the complainant, and sometimes by "Other Receipts". In the letter, the ex-wife stated that personnel at the FSP told her that "Other Receipts" came from the complainant's lawyer's trust fund, but that payor support meant that the complainant was paying the support directly to the FSP.

The complainant believed that although his ex-wife would have had the right to know the status of the account, she had no right to know the specifics of his payments. He believed that the Freedom of Information and Protection of Privacy Act (the Act) had been breached by the above disclosure.

## Issues Arising from the Investigation

The following issues were identified as arising from the investigation:

- (A) Did the general ledger record contain the complainant's "personal information", as defined in section 2(1) of the Act? If yes,
- (B) Did section 37 of the Act apply to the complainant's personal information?
- (C) Was the complainant's personal information disclosed in accordance with section 42 of the Act?

## RESULTS OF THE INVESTIGATION

**Issue A: Did the general ledger records contain the complainant's "personal information", as defined in section 2(1) of the Act?**

Section 2(1) of the Act defines "personal information" as 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,
- ...
- (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;
- ...

We examined a copy of the general ledger record printout and found that it contained the complainant's last name, information about his marital or family status, his FSP account number, and the amounts, dates, and other detail of the financial transactions related to his support payments. In our view, the general ledger record contained the complainant's "personal information" as defined in sections 2(1)(a), (b), (c), and (h) of the Act.

**Conclusion:** The general ledger record contained the complainant's "personal information", as defined in section 2(1) of the Act.

**Issue B: Did section 37 of the Act apply to the complainant's personal information?**

The FSP raised the question of whether section 37 of the Act applied in the circumstances of this case. Section 37 states:

This Part does not apply to personal information that is maintained for the purpose of creating a record that is available to the general public.

In other words, the privacy provisions of the Act do not apply to personal information that is maintained for the purpose of creating a record that is available to the general public. The FSP noted that court proceedings, unless held in camera, are public, and orders issued by the court are also a matter of public record. In the circumstances of this case, a court order had been issued establishing a trust fund from which child support would be drawn.

However, the record at issue is the FSP's general ledger record, and not the court order. In our view, the FSP would not have maintained the complainant's personal information in its general ledger accounts for the purpose of making that information available to the general public; it would have maintained the personal information for the purpose of properly administering the accounts for which it was responsible. Therefore, it is our view that the FSP may not rely on section 37 of the Act to exempt the general ledger record from the privacy provisions of the Act.

**Conclusion:** Section 37 of the Act did not apply to the complainant's personal information.

**Issue C: Was the complainant's personal information disclosed in accordance with section 42 of the Act?**

Section 42 of the Act prohibits the disclosure of personal information by an institution, except in the circumstances listed in sections 42(a) through (n). In our view, section 42(c) is relevant in the circumstances of this case. It states:

An institution shall not disclose personal information in its custody or under its control except,

...

(c) for the purpose for which it was obtained or compiled or for a consistent purpose;

...

The FSP stated that it was the statutory duty of the Director of the FSP to enforce a support order on behalf of a support recipient; the recipient is entitled to know whether there has been compliance with the court order, when payments were made and received, and the amount of support arrears owing. The FSP's view was that payment of support is a debt owing to the recipient; it was not inconsistent to reveal some details (such as those contained in the general ledger account) regarding the collection of that debt. Therefore, the FSP's position was that the disclosure did not violate the Act by virtue of section 42(c) of the Act (i.e. that the disclosure had been made for a consistent purpose).

Section 43 of the Act states:

Where personal information has been collected directly from the individual to whom the information relates, the purpose of a use or disclosure of that information is a consistent purpose under clauses 41(b) and 42(c) only if the individual might reasonably have expected such a use or disclosure.

According to the terms of the court order, the child support money was to be held in trust by the complainant's solicitor, and the support was to be paid out of the trust fund until it was exhausted; after that, the complainant was to make the child support payments directly to the FSP. The complainant indicated that the solicitor who held the trust fund was no longer acting as his agent. Therefore, any information about payments that the FSP obtained from the solicitor

would not have been collected directly from the complainant or his agent. Since the information would not have been collected directly, the complainant's reasonable expectations would not be a factor in determining whether the disclosure had been made for a consistent purpose. In our view, where personal information is collected indirectly, as in the circumstances of this case, a consistent purpose is one that is "reasonably compatible" with the purpose for which the personal information was obtained or compiled.

The court order provided that payments would be made to the support recipient. The FSP obtained the information about how the payments were made for the purpose of enforcing the court order on behalf of the support recipient. The purpose for which the information was disclosed to the complainant's ex-wife was to provide her with an explanation of how the payments had been made (i.e. either through the solicitor's trust fund [Other Receipts] or directly by the complainant [Payor Support]). In our view, the purpose for disclosing the personal information to the ex-wife was reasonably compatible with the purpose for which the FSP obtained the information. Therefore, it is our view that the disclosure was made in accordance with section 42(c) of the Act, for a consistent purpose.

**Conclusion:** The complainant's personal information was disclosed in accordance with section 42 of the Act.

### **Other Matters**

The complainant raised the issue of the accuracy of the FSP's general ledger record. He stated that since the trust fund had not expired at the time the information in question was provided to his ex-wife, any information about him having made payments directly to the FSP was inaccurate. We advised the complainant of his rights under section 47(2) of the Act to request a correction of his personal information.

### **SUMMARY OF CONCLUSIONS**

- The general ledger record contained the complainant's "personal information", as defined in section 2(1) of the Act.
- Section 37 of the Act did not apply to the complainant's personal information.
- The complainant's personal information was disclosed in accordance with section 42 of the Act.

Original signed by: \_\_\_\_\_

December 31, 1993 \_\_\_\_\_

Susan Anthistle  
Compliance Review Officer

Date