

August 26, 2011

[REDACTED]

Dear [REDACTED]

Re: Access to Information Request No. [REDACTED]

I am responding to your request for access to information which was received in this office on August 12, 2011. You requested records of payment by [REDACTED] to [REDACTED] or Legal Aid Ontario File [REDACTED] by the debtor ([REDACTED]) garnished by Legal Aid Ontario (Cost award [REDACTED]).

Records responsive to your request have been located. I am denying you access to those records, relying on provisions of the *Legal Aid Services Act* (LASA) and the *Freedom of Information and Protection of Privacy Act* (FIPPA).

I have concluded that The *Legal Aid Services Act* prohibits any disclosure in the circumstances of this request.

Section 90 of the *Legal Aid Services Act* provides as follows:

90.(1) A member of the board of directors, an officer or employee of the Corporation, an area director, a member of an area committee, a lawyer, a service-provider or a member, officer, director or employee of a clinic, student legal aid services society or other entity funded by the Corporation shall not disclose or permit to be disclosed any information or material furnished to or received by him or her in the course of his or her duties or in the provision of legal aid services.

(2) A person referred to in subsection (1) may disclose information or allow it to be disclosed in the performance of his or her duties or in the provision of legal aid services or with the consent of the applicant or if authorized by the Corporation.

The circumstances of this request are relevant. The cost award you refer to was made to you while you were in a legal proceeding in which your retainer was a legal aid retainer. Costs awarded to a legally aided client are the

property of Legal Aid Ontario, pursuant to section 46 of LASA. The whole cost award is payable to Legal Aid Ontario, whether or not the legally aided client is contributing to the legal costs, pursuant to section 46(2) of LASA. This is true even if the cost award exceeds the amount of legal fees paid to counsel or exceeds the amount to be paid to LAO on a contribution agreement, pursuant to section 46(3). All costs are to be paid to Legal Aid Ontario pursuant to section 46(4) of LASA.

In these circumstances, the costs awarded in your name are statutorily the property of Legal Aid Ontario. You have no legal interest in the funds. Details of the collection of the cost award is information which falls within section 90(1) of LASA. It does not appear that it would be part of our duties to allow the release of this material, as required by s. 90 (2), as you have no legal interest in the funds. The Corporation has not authorized the release of this information.

Please be aware that it is the position of Legal Aid Ontario that ss.89 and 90 of the *Legal Aid Services Act*, by legislation, prevail over the *Freedom of Information and Protection of Privacy Act*: see s.103 of the *Legal Aid Services Act* and s. 67(2) of the *Freedom of Information and Protection of Privacy Act*.

In addition, the provisions of the *Freedom of Information and Protection of Privacy Act* appear to prohibit the disclosure of this information. The definition of personal information includes "information relating to financial transactions in which the individual has been involved". The garnishment of a debt from a debtor appears to come within the definition of personal information of the debtor. Section 21 of the Act prohibits the release of personal information except with the consent of the person to whom the information relates, except in certain circumstances. I have reviewed the factors set out in Section 21(2) in determining whether the disclosure constitutes an unjustified invasion of personal privacy, including whether the information is relevant to a fair determination of the rights of the person who made the request. In that context, I have noted that you are not entitled to any portion of the cost award pursuant to legislation.

Section 21(3)(f) provides that disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness. The information which you are requesting appears to fall within this category. This information is the personal information of a person other than yourself and I conclude that the disclosure would constitute an unjustified invasion of personal privacy. Therefore, I am denying access pursuant to FIPPA, in the alternative, should section 90 of LASA not apply to these records

I am responsible for the decision to deny you access to the records. You may ask for a review of this decision within 30 days of receiving this letter by

writing to: The Information and Privacy Commission/Ontario, 2 Bloor Street West, Suite 1400, Toronto Ontario M4W 1A8, Telephone 1-800-387-0073.

If you decide to request a review of this decision, please provide the Commissioner's office with the following: the file number listed at the beginning of this letter; a copy of this decision letter; and a copy of the original request for information you sent to our institution.

In addition, you must send an appeal fee to the Commissioner's office. That appeal fee for information other than personal information is \$25.00.

Yours truly,

Robert W. Ward
President/CEO