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Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 49-1995
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INQUIRY RE: A refusal by the Ministry of Social Services to disclose an adult daughter's personal information to her mother

Fourth Floor
1675 Douglas Street
Victoria, B.C. V8V 1X4
Telephone: 604-387-5629
Facsimile: 604-387-1696
Web Site: http://www.cafe.net/gvc/foi

1. Description of the review

As Information and Privacy Commissioner, I conducted a written inquiry at the Office of the Information and Privacy Commissioner (the Office) in Victoria on May 26, 1995 under section 56 of the *Freedom of Information and Protection of Privacy Act* (the Act). This inquiry arose out of a request for review made by the applicant of a decision of the Ministry of Social Services (the Ministry) not to release the personal information of her daughter (now an adult), from the period when her daughter was a minor and in her custody.

On September 16, 1994 the Ministry of Social Services received a letter from the applicant requesting a copy of her personal file concerning her daughter's apprehension by the Ministry some time ago. The Ministry requested clarification of the type of file the applicant wanted and verification that she had legal custody of her daughter: it stated that if the applicant's daughter was over 12 years of age, an interview might be necessary to determine whether the daughter consented to the release of her personal information to the applicant; if the daughter was an adult, however, the daughter's consent would be required.

The applicant replied that she had the right to access her daughter's personal information for the period in which the daughter was a minor and in her custody. The Ministry replied on October 17, 1994, informing the applicant that it was providing access to the file with the exception of personal information of various third parties, including that of the daughter and the applicant's former husband. It denied access to the third parties' personal information under section 22(1) of the Act. The severed copies of the accessible records were sent to the Ministry's district office nearest to the applicant.

The applicant requested this Office to conduct a review of the Ministry's decision on November 2, 1994. On December 14, 1994, the Ministry released additional records to the applicant. The Notice of Written Inquiry was distributed to the applicant, the public body, and the daughter, as the principal third party, on January 18, 1995.

2. Documentation of the inquiry process

On January 23, 1995, the inquiry was suspended when the Ministry notified the Office of the Information and Privacy Commissioner that the applicant had not picked up the records sent in October 1994 to the district office. The records were then sent to the applicant's lawyer. At the request of the latter, the Ministry searched for more relevant records. A small quantity of additional records was discovered and released to the applicant. On April 21, 1995, the Office of the Information and Privacy Commissioner resumed the inquiry and issued an amended Notice of Written Inquiry to the applicant's representative, the public body, and the third party. Initial submissions were due on May 12, 1995, and reply submissions were due on May 19, 1995. The deadline for replies was extended to May 26, 1995 to accommodate the third party.

All parties received a Notice of Inquiry outlining the issues in this case, and a two-page Portfolio Officer's fact report. With a minor revision, the fact report was accepted by the parties as accurate for the purposes of conducting the inquiry.

The applicant, represented by Dorothy-Jean O'Donnell of the firm Ash, O'Donnell, Hibbert, made a submission on May 12, 1995 and a rebuttal on May 26, 1995. The public body, represented by Shauna Van Dongen of the Ministry of Attorney General, Legal Services Branch, made a submission on May 12, 1995 and a rebuttal on May 26, 1995. The third party made an *in camera* submission but did not make a rebuttal.

3. Issue under review at the inquiry

This inquiry concerned the application of sections 22(1) and 22(3) of the Act to the personal information of the applicant's daughter, now an adult. They read in appropriate part as follows:

Disclosure harmful to personal privacy [of third parties]

22(1) The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.

...

(3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if

> (a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation, ...

For the purposes of section 22, section 57(2) of the Act places on the applicant the burden of proving that the release of the record in question would not be an unreasonable invasion of the privacy of the third party.

4. The records in dispute

The records in dispute consist of the severed portions of the Ministry's Family Services files of the applicant, her husband, and daughter from 1974 to 1989. They include personal information of the daughter from the period when she was a minor and in the custody of her mother. The files contain a variety of records: interview notes, case notes, memoranda, completed intake forms, reference sheets, computer printouts, letters to and from the applicant, other reports by counsellors, psychologists, psychiatrists and family doctors, and reports and affidavits to a court on custody issues.

5. The applicant's case

The applicant's first concern is that she has not received all of the information held by the Ministry of Social Services concerning her. She submits that there are "additional files in the possession of the Ministry going back to 1974 which relate to protection concerns [the applicant] has raised with the Ministry concerning her daughter. The disclosure is not complete regarding family service files." I note here that the Ministry has released other GAIN and Family Maintenance files to the applicant and "has found no other records which pertain to the applicant in its files." (Reply for the Ministry, paragraph 1)

With respect to the information she has received, the applicant wishes me to rescind all of the severing which relate to her and her relationship with her daughter while the latter was in her custody as a minor.

In her reply submission, the applicant emphasized that the information she is seeking concerns "the actions of Ministry personnel" who "interfered with the mother-daughter relationship and have attempted to damage it." She believes that they have engaged in an "abuse of power."

Counsel for the applicant also provided me with a detailed commentary on the severances made by the Ministry. I will review them below, as it appears necessary and relevant to do so.

6. The Ministry of Social Services' case

The Ministry determined that disclosure of the records in dispute would be an unreasonable invasion of the privacy of third parties under section 22 of the Act, (which is a mandatory provision): "This is especially true given the difficulties that have plagued the relationship of the applicant and her daughter." (Argument for the Ministry of Social Services, paragraphs 1, 4, 11, 19, 21; Reply for the Ministry, paragraph 5)

The Ministry further argues that "much of the information being sought in this inquiry" falls under the scope of intimate and sensitive data intended to be protected under section 22(3)(a), which essentially provides "an exception from disclosure for any information relating to an individual's physical, mental or emotional health." In this case, "[m]uch of the information requested by the applicant involves assessments of third parties by social workers and therapists." (Argument for the Ministry, paragraphs 13-15)

In reaching its decision under section 22(2), the Ministry took into account, under section 22(2)(f), that some of the requested records were supplied in confidence, as evidenced by the fact that they are clearly stamped "confidential" or "private and confidential." (Argument for the Ministry, paragraphs 17, 18)

With respect to the burden of proof on the applicant under section 57(2) of the Act, the Ministry argues "that it will be very rare for one person to access another person's personal information without the consent of the person to whom the information relates. In this case, the daughter has not consented to disclosure of her personal information." (Argument for the Ministry, paragraphs 6, 7, 19)

The Ministry asked me to uphold the decision of the head of the public body to refuse to disclose the severed portions of the records to the applicant.

7. The daughter's case

As noted above, the daughter refuses to allow her mother to have access to information about her childhood and the intervention by the Ministry in their respective lives: "I am now of legal age and my privacy and my rights regarding this matter should be first and foremost .... to release any information to her would serve no other purpose than to further complicate my life and intrude on my privacy."

8. Discussion

Counsel for the applicant sought to argue that the focus of this inquiry should be "the appropriateness of the intervention of the Ministry in this family's life." In her reply submission, counsel added that the applicant wishes to investigate whether the Ministry "used false and misleading information in making decisions affecting herself and her daughter." With respect, I have to remind counsel and the applicant that the focus of this inquiry is whether the applicant has a right of access to certain records in the custody and control of the Ministry. (See also the Reply for the Ministry, paragraph 5) Whatever her motives for wanting the records, I can only deal with this issue of access to records under the *Freedom of Information and Protection of Privacy Act*. This venue is not a court of general jurisdiction for the righting of perceived injustices.

Corrections of errors in records

Counsel for the applicant is of the mistaken impression that there is no provision in the Act to allow for the correction of false and misleading information which exists in government records and that this is relevant to the applicant's request for a fair, preferably oral, inquiry. I note simply that section 29 of the Act gives applicants a right to request correction of their personal information. In addition, I decided the issue of whether an inquiry is oral or written under section 56(4)(a) of the Act. In the present case, I agree with the reply submission of the Ministry that a written inquiry was more appropriate in the first instance. As I have done before, I could have proceeded to an oral inquiry if I deemed it appropriate to do so. (Reply for the Ministry, paragraph 9)

The Ministry addressed the concern of the applicant about correction by noting that "if the severed information is someone else's opinion of the applicant, it cannot be 'corrected.'" It reflects "what third parties reported to Ministry social workers." The Ministry correctly relied on my Order No. 20-1994, August 2, 1994, p. 11 on this point. I also find it appropriate that the Ministry informed the applicant that it has no objection to her "providing her version of events to the Ministry for inclusion in the file." (Reply for the Ministry, paragraph 6(a))

Raising new issues in reply submissions

The Ministry and the applicant in this case both made reply submissions commenting on each other's arguments. The Ministry objected to paragraph 10 of the applicant's reply submission (involving a Federal Court of Canada decision), as clearly attempting "to present new argument and case law to the Commissioner that is not responsive to anything that the Ministry raised in its initial submissions." It asked me to disregard paragraph 10 in particular, since "other parties have no right or ability to respond to a reply submission." The issue is moot in the present inquiry, because I determined that paragraph 10 is not persuasive with respect to the matter before me.

More generally, I accept the general premise of the Ministry's characterization of the appropriate character of reply submissions, that is, they should focus on being responsive to arguments already made by parties in the inquiry. Had I determined that the new argument was indeed relevant, I would have further invited all parties to respond to it.

Direct contact with third parties

The applicant has objected on several occasions to the "fact" that the Ministry made contact with her daughter as part of this inquiry. The Ministry states that it has never done so but concludes, appropriately, that my Office has done so in relation to the daughter participating as a third party in this review. (Reply Submission for the Ministry, paragraph 2) My Office did so under section 54 of the Act, which states that "[o]n receiving a request for a review, the commissioner must give a copy to ... (b) any other person that the commissioner considers appropriate." Under section 56(3), such a person must also be "given an opportunity to make representations to the commissioner during the inquiry." In the present inquiry, this Office approached the third party because the records in dispute concerned her.

Section 22(3)(a) and Regulation 3

Counsel for the applicant has further argued that the release of the information sought would not be an unreasonable invasion of the daughter's privacy: "On the contrary, the release of this information would assist both [the applicant/mother and her daughter] to have a more clear picture of how the Ministry's intervention occurred, and how decisions concerning this family were taken." While these may be true, or at least interesting, statements and concerns, the mother can only now obtain access to the information concerning her daughter with the consent of the daughter, which has not been forthcoming. Under Regulation 3(a) of the Act, as custodial parent, a mother has decreasing rights to exercise a daughter's right of access to her personal information during the period of her daughter's minority. Such rights of access terminate completely once the minor subject of the records has become an adult. (See my previous Orders Nos. 2-1994

February 7, 1994 and 10-1994, May 27, 1994; Argument for the Ministry, paragraphs 2, 20; and Reply for the Ministry, paragraph 4) Thus, I find that it would be an unreasonable invasion of the daughter's personal privacy for the mother to have access to the daughter's personal records, even from the period when she was a minor.

Review of the records in dispute

I conducted a detailed review of the severances of the records in dispute in order to determine their appropriateness. In general, I am in agreement with the severances carried out by the Ministry under section 22(3)(a) of the Act. This reflects my general interest in deferring to the expertise of public bodies in their severing practices under specific sections of the Act, so long as I have an opportunity to examine them in detail in the context of a specific inquiry, such as the present one. One of my roles is to give assurances to the applicant, based on a review of all of the records in dispute, that the severances carried out by the Ministry were in compliance with the requirements of the Act.

I do have one qualification with respect to the severances by the Ministry. One of the arguments advanced by the Ministry is that it refuses to release certain information to the applicant, even if already known by her, because it has no control over what the applicant may do with this information. (See Argument for the Ministry, paragraphs 3, 12) In my recent Order No. 44-1995, June 13, 1995, pp. 7-8, I rejected this practice of the Ministry as unauthorized by the Act. Thus my detailed review of the records in dispute was also designed in part to test whether any additional information that falls into this category should be disclosed to the applicant.

In the present case, the Ministry has systematically severed such basic information, obviously known to the mother, as the name of her child, her birthdate, and the school she attended from printed forms that had a category for "child." It has also done so under the category of "man" for the applicant's former husband. It has also severed the names of husband and child in descriptions of custody battles. Furthermore, the Ministry has severed information that the applicant provided to it in the first instance in interviews and in letters to and from the applicant. I again find these practices inappropriate under the Act, because they are not an unreasonable invasion of privacy, and order the Ministry to release such information to the applicant. I acknowledge that the net effect of this disclosure will not significantly increase the amount of new knowledge that the applicant will receive.

Burden of proof

In agreement with the reply submission of the Ministry, I find that the applicant has not met the burden of proof assigned to her under section 57(2) of the Act.

9. Order

Under section 58(2)(b) of the Act, I confirm the decision of the Ministry of Social Services to refuse access to most of the records in dispute to the applicant.

Under section 58(2)(a) of the Act, I find the Ministry of Social Services was not authorized or required to refuse access to certain information in the records in dispute. Therefore, I order the Ministry to give to the applicant access to references in severed records that contain the names of her husband and daughter adjoined to a reference, where there is no possible doubt that such a person is being discussed. To assist the Ministry, I have prepared a new version of the severed records showing what should now be disclosed.

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David H. Flaherty
Commissioner

July 7, 1995