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Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 86-1996
February 27, 1996

INQUIRY RE: A decision by the Ministry of Social Services that a request for personal information did not fall within the scope of the *Freedom of Information and Protection of Privacy Act*

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1. Description of the review

As Information and Privacy Commissioner, I conducted a written inquiry at the Office of the Information and Privacy Commissioner in Victoria on November 28, 1995 under section 56 of the *Freedom of Information and Protection of Privacy Act* (the Act). This inquiry arose out of two requests for review, dated September 1, 1995 and September 2, 1995, concerning the Ministry of Social Services' decision to refuse access on the basis that the original requests for access to records were outside the scope of the Act.

On August 11, 1995 the applicant asked the Ministry for a copy of both sides of a cancelled cheque payable to his place of residence. In addition, the applicant requested on August 12, 1995 the most recent letters and memos between himself and the Ministry, miscellaneous notes, inter-office memos concerning himself, and the instructions from the Information and Privacy Division of the Ministry. These records were to include documentation about the applicant from the Regional Director, the Area Manager, and the local office including the District Supervisor and other staff. These records are in the custody of the Ministry of Social Services.

2. Issue under review at the inquiry

The issue under review in this inquiry is whether the Ministry's decision that the records requested were available through a routine procedure and thus, under section 2 of the Act, did not fall within its scope.

Section 2 reads in part as follows:

2(1) The purposes of this Act are to make public bodies more accountable to the public and to protect personal privacy by

(a) giving the public a right of access to records,

(b) giving individuals a right of access to, and a right to request correction of, personal information about themselves,

....

(2) This Act does not replace other procedures for access to information or limit in any way access to information that is not personal information and is available to the public.

3. Burden of proof

As the Act is silent on the burden of proof with respect to this issue, and the applicant is alleging that the Ministry is refusing him access to the records requested, the Ministry has accepted the burden of proof for purposes of this inquiry.

4. The applicant's case

On October 23, 1995 my Office wrote to the applicant to explain that, at his direction, his request for a review of this matter would not be pursued. On October 27 he replied, stating that I made a "false statement" both on this occasion and in an affidavit my office filed in the Supreme Court of British Columbia on another matter pertaining to the applicant.

In a subsequent letter the applicant accused me of failing to respond to his letter of September 23, 1995: "Based on history this is not unusual for you." He further claims that I am ignoring his communications, refusing to comply "with the Law," and "appear to be proceeding on your [my] own without regard to the Law."

Although the period for submissions in this inquiry was extended to allow the applicant to make submissions, I have not seen the letter of September 23, 1995.

I infer that the applicant is not satisfied, for some unstated reason, with the Ministry's plans to grant him routine access to his own personal records.

5. The Ministry's case

Due to past experience with this applicant, the Ministry has a standing arrangement that he can review any of his files in person at one District office and have any document of his choosing copied for him. The applicant has also been provided with the specific information he requested. (Submission of the Ministry, paragraphs 2.1 and 2.2; see also 5.2)

The problem is that the applicant believes that he has been denied access to his records: "In this specific inquiry the Public Body will show that it has in fact not denied access to the

Applicant but has provided the best access possible which is routine access at any time the Applicant desires." (Submission of the Ministry, paragraph 3.2)

The Ministry submits that under section 2 of the Act the ideal kind of access to records is routine access. This has happened in the present matter as a responsive way of dealing with a demanding and persistent applicant. (Submission of the Ministry, p. 6) In doing so, the Ministry claims that it has complied with section 6 of the Act as well. The Ministry has so acted because of its direct experience with this applicant and what it has learned from an affidavit filed in the Supreme Court of British Columbia involving a judicial review brought by the applicant against my Office. (Submission of the Ministry, paragraphs 5.8 and 5.9)

6. Discussion

In my judgment, the Ministry has gone well beyond the call of duty in attempting, on a continuing basis, to assist this applicant with his requests for access to his own personal information held in Ministry files. It has even arranged to have all of his records kept at a particular District office to facilitate his access to his own material. The applicant simply has to call and make an appointment. (Affidavit of Judy Forbister, paragraphs 6-8)

It might be arguable, under circumstances different from those of the present applicant, that routine disclosure of information might deprive an applicant of reliance on the full force of the Act. But since the Ministry will copy and disclose to him any of his records that he wishes to see, it is hard to see what his problem is. Promoting more and more routine disclosure of general and personal records is one of the goals of my Office and of public bodies subject to the Act. A major rationale is cost effectiveness, a goal that is very much in the interests of taxpayers.

The applicant has not stated that he feels threatened or inconvenienced by having to visit a District office. In the past, the Portfolio Officer reviewing this case with the applicant has offered to go to the office in question with him. My understanding of the standard security practice of the Ministry is that applicants for information usually have to pick up the records being disclosed at a Ministry office.

I am very concerned about the burgeoning costs to innumerable public bodies of granting individuals access to their own personal records. Clerical and copying charges are significant in this regard. I have been impressed by the good faith efforts of public bodies, broadly defined, to comply with the goals of the legislation in this regard. What I must also plead for, on their behalf, is that individuals exercise their access rights responsibly. I do not regard the present applicant as acting in that manner, such as when he threatened the Ministry on September 14, 1994 that he would request updates about his personal information every two weeks thereafter. (Affidavit of Judy Forbister, paragraph 7)

7. Order

I find that the Ministry of Social Services was authorized to refuse access and has not, in fact, denied the applicant access to his own personal information. Further, I find that the Ministry has correctly applied section 2 of the Act, and acted within the spirit and intention of

the Act, in providing the applicant with routine, ready access to his own personal information. Under section 58(2)(b), I confirm the decision of the Ministry of Social Services.

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David H. Flaherty
Commissioner

February 27, 1996