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**Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 145-1997
January 27, 1997**

INQUIRY RE: Decisions of the Ministry of Social Services regarding an applicant's request for records relating to sexual abuse investigations

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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 (the Office) on December 11, 1996 under section 56 of the *Freedom of Information and Protection of Privacy Act* (the Act). This inquiry arose out of a request for review of a decision by the Ministry of Social Services, as it was then known, to withhold records containing the personal information of third parties.

2. Documentation of the inquiry process

On March 4, 1996 the applicant requested from the Ministry of Social Services access to all records containing the nature and source of allegations or complaints made against her father. On June 12, 1996 the applicant's father and stepmother provided written consent for the disclosure of any records containing their personal information to the applicant.

On July 18, 1996 the Ministry of Social Services disclosed some records to the applicant and advised that information that could unreasonably invade the privacy of other persons had been withheld under section 22 of the Act.

On August 22, 1996 my Office received from the applicant a request for review of the decision by the Ministry of Social Services to sever information from the files. On November 1, 1996 the applicant requested an inquiry by me.

On November 5, 1996 my Office gave notice to the applicant and the public body of the written inquiry to be held on November 27, 1996. Two extensions to the date of

the inquiry were agreed to, with the final extension setting a new inquiry date of December 11, 1996.

There are approximately 220 pages of records in the complete file. Initially, approximately 35 pages of records were subject to the inquiry. On November 12, 1996 the Ministry made a second disclosure of records, leaving approximately 18 pages of records at issue in this inquiry.

On November 14, 1996 the Portfolio Officer's fact report was revised to recognize that third parties were not given notice by the Ministry and would not be given notice by my Office, because the addresses of the third parties are either inaccurate or unavailable.

On November 14, 1996 the solicitor for the Ministry gave notice to the applicant and my Office that they would also be relying on section 15(1)(a) in addition to section 22 in this inquiry. I note that the Ministry added this discretionary exception to the records months after the initial decision was given to the applicant. I would urge all public bodies to carefully consider any applicable exceptions at the time the decision is being made to avoid this situation recurring. I am accepting the Ministry's submission with regard to the application of section 15(1)(d) to the records in dispute because there is no prejudice to the other party.

3. Issues under review at the inquiry and the burden of proof

The issues to be reviewed in this inquiry are the Ministry's application of section 15(1)(d) and section 22(1) to withhold the records in dispute. The relevant portions of sections 15 and 22 are reproduced below:

15(1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to

...

(d) reveal the identity of a confidential source of law enforcement information,

....

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.

22(2) In determining under subsection (1) or (3) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether

- (a) the disclosure is desirable for the purpose of subjecting the activities of the government of British Columbia or a public body to public scrutiny,
- ...
- (c) the personal information is relevant to a fair determination of the applicant's rights,
- ...
- (e) the third party will be exposed unfairly to financial or other harm,
- (f) the personal information has been supplied in confidence,
- ...
- (h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant.

22(3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if

- ...
- (b) the personal information was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation,
-

Section 57 of the Act establishes the burden of proof on the parties in this inquiry. Under section 57(1), since the Ministry relied on section 15(1)(d) to refuse an applicant access to all or part of a record, it has the burden of proof under this section. Under section 57(2), since the record that the applicant was refused access to contains personal information about a third party, it is up to the applicant to prove that disclosure would not be an unreasonable invasion of a third party's personal privacy under section 22 of the Act.

4. The records in dispute

The Ministry has withheld records including the identities of, and identifying information about, the complainants.

5. The Ministry of Social Services' case

The Ministry has denied the applicant access to records "which would disclose the names and identifying information of individuals who notified the Ministry of Social Services ... of suspected child abuse allegations involving members of the Applicant's family." It so acted on the basis of sections 15(1)(d) and 22 of the Act, as I have discussed below.

The Ministry's basic position is as follows:

The Public Body's overriding concerns in this case are that the identities of those who report suspected instances of child abuse be protected from disclosure. The Public Body submits that the Commissioner should take into consideration the possible implications of releasing information about informants in child abuse investigation files. The chilling effect of such a practice on encouraging children and others to reveal their knowledge of possible abuse would be enormous. (Submission of the Ministry, paragraph 5.03; and see also Reply Submission of the Ministry, paragraph 5.13)

The Ministry further submitted that disclosure of the record at issue is prohibited under sections 22(1), 22(3)(b), and 22(2)(f). I have discussed these arguments further below.

6. The applicant's case

The applicant alleges that the Ministry acted in bad faith and unfairly and with "a deliberate disregard for the fundamental rights of the Applicant" in its handling of this particular set of allegations. It has also acted with insufficient regard for the rights of the suspect (her father). The applicant further submits that the Ministry acted upon "false and slanderous statements."

The applicant swears that the "allegations made against my family in those [Social Service] files are held to be untrue, malicious, slanderous."

7. Discussion

The applicant, her father, and other family members have a number of concerns about the Ministry of Social Services and other individuals that extend far beyond my jurisdiction under the Act. Simply put, there is nothing that I can do to right their sense of injustice, nor to sort out various claims about who did, or did not, do what to whom and when. Fortunately, clarifying the complex set of charges and countercharges in this case, involving a wide variety of persons, is immaterial to the decision that I have to make concerning the disclosure of specific identifiers under the Act.

In addition, the applicant's submission on her burden of proof under section 22 of the Act appears to be primarily directed to correcting perceived errors in records already released to her family by the Ministry. There are alternative methods, under the Act, for such correction or annotation rights to be exercised by working directly with the Ministry, which states that it "would be happy to place a copy of the Applicant's versions of events on the file in question." (Reply Submission of the Ministry, paragraph 6.01)

Section 15(1): The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to

...

(d) reveal the identity of a confidential source of law enforcement information,

....

The Ministry submits that the records in dispute meet all of the criteria outlined in this subsection. (Submission of the Ministry, paragraphs 5.05-5.11) The practice of non-disclosure of such information about complainants reflects as well the governing statutes of the Ministry and a 1981 decision of the Supreme Court of British Columbia. (Submission of the Ministry, paragraphs 5.12, 5.13) The Ministry further submits that the investigation of child abuse is a matter of law enforcement as defined in the Act and under the *Criminal Code* of Canada. (Submission of the Ministry, paragraphs 5.14-5.18) The Ministry further argued that I should be guided in my decision in the present inquiry by my Order No. 44-1995, June 13, 1995, p. 5.

I am fully persuaded by the Ministry's arguments with respect to the application of section 15(1)(d) to the records in dispute. I agree that it is not in the public interest to require disclosure of information that could reasonably be expected to reveal the identity of a confidential source of law enforcement information.

Section 22(3): A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if

...

(b) the personal information was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation,

....

The Ministry argues that this section covers the information sought by the applicant for reasons already discussed above in connection with section 15(1)(d). (Reply Submission of the Ministry, paragraphs 5.06-5.08)

I agree with the Ministry's application of this section to the records in dispute. (See Order No. 66-1995, November 27, 1995, p. 6; Order No. 81-1996, January 25, 1996, p. 6)

Section 22(2): In determining under subsection (1) or (3) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether

...

(f) the personal information has been supplied in confidence,

....

The Ministry submits that the information in dispute in this inquiry has been supplied in confidence: "The public body is legally required to and does treat this kind of information confidentially." (Reply Submission of the Ministry, paragraph 5.11)

I agree with the Ministry's submission on this subsection. (See Order No. 70-1995, December 14, 1995, pp. 5, 8)

Findings

On the basis of my review of the records in dispute, I find that the Ministry has correctly applied sections 15 and 22 of the Act to the severed material.

Under section 22 of the Act, I find that the applicant has failed to meet her burden of proof. (See Reply Submission for the Ministry, paragraphs 1.02, 3.03, 4.01-4.03)

8. Order

I find that the head of the Ministry of Social Services was authorized to refuse access to the information in the records in dispute under section 15(1)(d) of the Act. Under section 58(2)(b), I confirm the decision of the head of the Ministry of Social Services to refuse access to the applicant.

I also find that the head of the Ministry of Social Services was required to refuse access to the information in the records in dispute under section 22 of the Act. Under section 58(2)(c), I require the head of the Ministry of Social Services to refuse access to the applicant.

David H. Flaherty
Commissioner

January 27, 1997