

**Office of the Information and Privacy Commissioner  
Province of British Columbia  
Order No. 213-1998  
February 5, 1998**

**INQUIRY RE: Information about a client's family withheld by the Ministry for Children and Families**

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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 October 9, 1997 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 the response by the Ministry for Children and Families (the Ministry) to an applicant's request for records in the custody or under the control of the Ministry.

**2. Documentation of the inquiry process**

The applicant made a request on January 18, 1997 for "anything regarding frauding the Ministry of Social Services and requesting all files from Aug 96 to Jan 97." The Ministry disclosed various records on June 23, 1997. Some information and several entire pages were withheld under section 22(1) of the Act and/or under section 77(1)(a) of the *Child, Family and Community Service Act (CFCSA)*. The applicant wrote to my Office on July 6, 1997 to request a review of the Ministry's decision. Subsequently, a Notice of Written Inquiry was issued on September 17, 1997 for an inquiry on October 9, 1997. The Notice named a third party who subsequently consented to the disclosure to the applicant of a letter she wrote to the former Ministry of Social Services. The Ministry then disclosed the letter to the applicant as well as some other information that it had previously withheld. During the course of the inquiry I identified another third party and provided that party with an opportunity to make representations.

**3. Issue under review and the burden of proof**

At issue in this inquiry is whether a Director of the Ministry properly applied section 77(1) of the *CFCSA* to withhold information from the applicant. Section 77

incorporates most of section 22 of the Act. Section 89(1) of the *CFCSA* provides that a person who requests access to a record may ask the Information and Privacy Commissioner to review any decision, act, or omission of a director that relates to the request. The relevant provisions are reproduced below:

***Child, Family and Community Service Act***  
***Exceptions to access rights***

- 77(1) A director must refuse to disclose information to a person who has a right of access under section 76 if the disclosure
- (a) would be an unreasonable invasion of a third party's personal privacy, or
- ....
- (3) Section 22 (2) to (4) of the *Freedom of Information and Protection of Privacy Act* applies for the purpose of determining whether a disclosure of information is an unreasonable invasion of a third party's personal privacy.
- 89(1) A person who requests access to a record or correction of a record may ask the Information and Privacy Commissioner to review any decision, act or omission of a director that relates to the request.
- ...
- (3) To ask for a review, a written request must be delivered to the Information and Privacy Commissioner
- ...
- (5) Section 44 to 49, 54 to 57, 58(1), (2) and (3)(d) and 59 of the *Freedom of Information and Protection of Privacy Act* apply in respect of a review requested under this section except that a reference to a public body is to be read as a reference to a director.

***Freedom of Information and Protection of Privacy Act***  
***Disclosure harmful to personal privacy***

- 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.
- (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,
- (g) the personal information is likely to be inaccurate or unreliable, and
- (h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant.
- ....

Section 89(5) of the *CFCSA* incorporates section 57 of the Act for the purposes of a review under section 89(1) of the *CFCSA*.

Section 57 of the Act establishes the burden of proof on the parties in this inquiry. Under section 57(2), if the record or part that the applicant is refused access to contains personal information about a third party, it is up to the applicant to prove that disclosure of the information would not be an unreasonable invasion of the third party's personal privacy.

#### **4. The records in dispute**

Information at issue in this inquiry consists of three separate internal (to the Ministry) e-mail messages. The Ministry has severed two sentences from one, one sentence in another, and four words in the third. The applicant has already received approximately 500 pages of records.

#### **5. The applicant's case**

The applicant is seeking the information that the Ministry has severed from its records. She believes that a false accusation was made concerning her in a phone call that someone made to the Ministry:

... it is not important to me as to **whom** made the report, but it's very important for me to know **what** the report said - to obtain that information to clear my name and my record.... Disclosure of this specific report to me, will not be an unreasonable invasion of that person's privacy because I already know who it is. I have no concerns with that. What I want to make abundantly clear is that I'm needing to know what I was accused of. That is all.... Once the report or accusation is revealed to me, I plan to have it removed from my files if it is a negative and untrue allegation. Then I can have peace. (Submission of the Applicant, p. 1)

## **6. The Ministry for Children and Families' case**

The Director has withheld the information in dispute on the basis of section 77(1)(a) of the *CFCSA*, because its disclosure would be an unreasonable invasion of the privacy of the third party.

## **7. The third party's case**

During my initial consideration of this matter, I asked for a submission from the third party, which was made on an *in camera* basis.

## **8. Discussion**

### ***Section 77(1) of the CFCSA and Section 22 of the Act***

The Director specifically relies on sections 22(2)(e), (f), (g), and (h) of the Act to refuse access. (Submission of the Ministry, paragraph 5.03) I have carefully reviewed the Ministry's *in camera* submissions in this regard and find these subsections to be relevant circumstances that the Ministry needed to consider in reaching its decision.

## **9. Review of the records in dispute**

I am considerably hampered in this inquiry by the *in camera* nature of the submissions from the Ministry, which limits what I can publicly state about the evidence and the reasons for my decision. The same point applies to the submission of the third party. However, based on my review of the evidence, I am satisfied that the small amount of information in dispute has been appropriately withheld by the Director on the basis of the considerations outlined in section 22(2)(e), (f), (g), and (h) of the Act, which are relevant for the purposes of section 77(1) of the *CFCSA*.

### ***The recording of information obtained from social workers, health care providers, and other counsellors***

This inquiry raises a systemic issue that has arisen in other inquiries and is worth bringing to the attention of social workers, health care providers, and other counsellors. It is evident that social workers, and especially child protection workers, collect personal

information that they deem to be relevant to a case file from any available source. Individuals who provide such information should become more aware of this practice. Otherwise, they run the risk, as in this case, of making comments about a person or family, perhaps when discussing an unrelated matter, which ends up being recorded in a social work file and attributed to the informant.

Anyone offering solicited or unsolicited personal information to the Ministry for Children and Families should be aware, and be made aware, of the likelihood of information being recorded in a format that might make it accessible to others under the Act, in particular the person(s) that the information is about. It goes without saying that everyone should guard against making unsubstantiated and subjective allegations about another person. In addition, informants should be strongly encouraged to be as objective as possible when offering personal information to any public body.

Social workers obviously require as much relevant information as possible in order to do their important and pressured work and are authorized to collect such information under relevant legislation. The social work community should explain to their informants that personal information offered orally may be recorded, just as those furnishing oral or written information should make every effort to indicate, explicitly, that they are supplying it on a confidential basis.

## **10. Order**

I find that the Director of the Ministry for Children and Families was required under section 77(1) of the *Child, Family and Community Service Act* to refuse to disclose the records in dispute to the applicant.

Under section 89(5) of the *Child, Family and Community Service Act*, I have the authority under section 58(2)(c) of the *Freedom of Information and Protection of Privacy Act* to confirm a decision of the Director of the Ministry for Children and Families. Under section 58(2)(c), I, therefore, require the Director of the Ministry for Children and Families to refuse access to the records withheld on the basis of section 77(1) of the *Child, Family and Community Service Act*.

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David H. Flaherty  
Commissioner

February 5, 1998