OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER

British Columbia
Canada

Order 00-03

INQUIRY REGARDING MINISTRY FOR CHILDREN & FAMILIES FAMILY SERVICES RECORDS

David Loukidelis, Information and Privacy Commissioner
January 28, 2000

Order URL: http://www.oipcbc.org/orders/Order00-03.html
Office URL: http://www.oipcbc.org
ISSN 1198-6182

Summary: Applicant sought records relating to his family's involvement with the Ministry and its predecessor agency. Applicant also sought Ministry records relating to complaints lodged by applicant about his daughter. Ministry disclosed some records (including applicant's personal information) and withheld third party personal information. Ministry required under both CFCSA and Act to refuse to disclose information. Ministry entitled to consider relevant circumstance of hostile relations between applicant and daughter. Applicant's assertion of need for information for legal proceedings insufficient to favour disclosure.

Key Words: Personal information – relevant circumstances

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, ss. 14, 22(1), (2), and (3), and s. 57(2); *Child, Family and Community Service Act*, ss. 77(1)(a) and (b), (3) and 89(5)

1.0 INTRODUCTION

The applicant in this inquiry sought a complete copy of a family service file held by the Ministry for Children and Families ("Ministry"). The Ministry found what it described as "one old set of files" consisting of a family services file and a child in care file. These files deal with the involvement of a predecessor ministry with the applicant's family. They pre-date enactment of the *Child, Family and Community Service Act* ("CFCSA"), and therefore are subject to the access and privacy provisions of the *Freedom of Information and Protection of Privacy Act* ("Act"). They are called the Old Files in this order.

A further file involving the applicant's family was also found. It relates to a dispute between the applicant and his adult daughter. Parts of this file pre-date enactment of the CFCSA and are also subject to the Act. The rest of the file is subject to the special access and privacy regime under the CFCSA. It is referred to in this order as the Recent File.

The Ministry disclosed, in full, approximately 26 pages from the Old Files to the applicant. It disclosed, in full, approximately 31 pages from the Recent File to the applicant. The Ministry withheld other records and portions of other records from both the Old Files and the Recent File. The personal information withheld relates, for the most part, to the applicant's daughter. The information includes notes taken by social workers of interviews with the daughter and written statements made by the daughter. The information in these notes is clearly the daughter's personal information and is, in many respects, very private and sensitive information.

This inquiry concerns the Ministry's refusal to disclose some of the information in these files, to which the applicant takes strong exception. He says he needs the files' entire contents for unspecified (and apparently yet to be initiated) court proceedings. For the reasons given below, I have decided the Ministry was required by s. 22(1) of the Act, and by s. 77(1)(a) of the CFCSA, to refuse to disclose to the applicant the information it withheld from him.

2.0 ISSUES

These are the issues:

1. As regards the Old Files, is the Ministry required by s. 22(1) of the Act to refuse to disclose personal information in the files to the applicant?

2. As regards the Recent File, is the Ministry required by s. 77(1)(a) or (b) of the CFCSA to refuse to disclose personal information in the file to the applicant?

Under s. 57(2) of the Act, "it is up to the applicant to prove that disclosure of the information would not be an unreasonable invasion" of the personal privacy of any third party whose personal information is in the records. This burden of proof applies to both CFCSA records and records subject to the Act.

3.0 DISCUSSION

3.1 Jurisdiction Under the CFCSA – I should first explain how I have the jurisdiction to deal with the request for review regarding records covered by the CFCSA.

Section 74 of the CFCSA says that, except as provided in Part 5 of the CFCSA, the Act does not apply to a "record made under" the CFCSA or to information in it. The term "record" is defined in s. 73 as a record – as defined in the Act – that is made under the CFCSA on or after January 29, 1996 and is in the custody or control of a director under

the CFCSA. As was noted above, some of the records in the files here fall under this definition and are therefore subject to the CFCSA. Section 76 of the CFCSA gives a person a right of access to CFCSA records "containing information about the person", but that right is subject to privacy protections afforded to others under s. 77 of the CFCSA. (Section 77 is quoted below.)

To the extent this inquiry deals with records that are subject to the CFCSA, my jurisdiction to deal with them derives from s. 89 of the CFCSA. Under s. 89, a person whose access request under s. 76 has been denied can ask my office for a review under the Act of that refusal. Section 89(5) provides that the Act's sections that apply to requests for review, and to inquiries, apply to a request for review under the CFCSA.

3.2 Analyzing Access and Privacy Issues under the Two Statutes - As regards the privacy issues under the CFCSA, the relevant portions of s. 77 of that statute read as follows:

> 77(1) A director [appointed under the CFCSA] must refuse to disclose information to a person who has a right of access [to information] under section 76 if the disclosure
>
> (a) would be an unreasonable invasion of a third party's personal privacy, or
>
> (b) could reasonably be expected to reveal the identity of a person who has made a report under section 14 and who has not consented to the disclosure.
>
> ...
>
> (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.

Similarly, s. 22(1) of the Act provides that the Ministry must refuse to disclose to the applicant any "personal information" if the disclosure would be an "unreasonable invasion of the personal privacy" of a third party. The term "personal information" is defined, for the purposes of the Act but not of the CFCSA, as being "recorded information about an identifiable individual". The Act's definition gives some examples of kinds of personal information. (Unlike s. 22 of the Act, s. 77 of the CFCSA is not restricted to disclosure of personal information. A director under the CFCSA must consider third party privacy interests whenever access is sought to "information", not just "personal information".)

Both the CFCSA and the Act require a public body to determine whether information can be released to an access applicant without unreasonably invading the personal privacy of a third party in light of ss. 22(2) through (4) of the Act. (Again, s. 77(3) of the CFCSA incorporates those sections of the Act for the purposes of the privacy analysis under the CFCSA.)

Section 22(2) of the Act requires a public body to consider all of the "relevant circumstances" in deciding whether disclosure of requested information would constitute an unreasonable invasion of a third party's personal privacy. That section sets out a non-exhaustive list of relevant circumstances. Here is s. 22(2):

> 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,
>
> (b) the disclosure is likely to promote public health and safety or to promote the protection of the environment,
>
> (c) the personal information is relevant to a fair determination of the applicant's rights,
>
> (d) the disclosure will assist in researching or validating the claims, disputes or grievances of aboriginal people,
>
> (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.

For its part, s. 22(3) creates a set of presumed unreasonable invasions of personal privacy. A presumed unreasonable invasion of personal privacy applies if information described in the relevant paragraph of s. 22(3) is covered by an access request. A presumption is rebuttable in an inquiry such as this. The applicant bears the burden of rebutting the presumption. I will not quote s. 22(3) in full, but will deal with each of the relevant aspects of it below.

3.3 Privacy Analysis In This Case - A large part of the applicant's submissions in this inquiry focussed on what he sees as his unqualified right to have all of the information. But the files contain a significant amount of personal information of his daughter, and other third parties, which means their privacy interests may curtail the applicant's access rights.

Personal Medical History - The Ministry argued that two presumed unreasonable invasions of personal privacy under s. 22(3) apply in this case. First, it said, disclosure of some of the information in the records would be a presumed unreasonable invasion of third party personal privacy under s. 22(3)(a). That section raises a presumed

unreasonable invasion of personal privacy if the "personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation". The Ministry noted that some of the information in the disputed records is third party personal information of this kind. My review of the records confirms the Ministry correctly decided that s. 22(3)(a) applies to some information in the records.

Investigation into Violation of Law - The Ministry also argued that s. 22(3)(b) applies here. That section creates a presumed unreasonable invasion of personal privacy where 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 noted that much of the information in the records relates to various allegations that could result in sanctions or penalties under the CFCSA, thus raising the s. 22(3)(b) presumption. Again, my review of the records, and of the other material before me, confirms the correctness of the Ministry's decision that s. 22(3)(b) applies to parts of the records.

Relevant Circumstances - As was noted above, the Ministry is required, once it has decided that one or more of the presumed unreasonable invasions of personal privacy applies, to consider all relevant circumstances in deciding whether disclosure would be an unreasonable invasion of personal privacy or not for the purposes of s. 22(1). In this case, the Ministry said the relevant circumstances set out in s. 22(2) (e), (f) and (h) support its decision. I need only deal with s. 22(2)(e) for the purposes of this case.

Section 22(2)(e) says a public body must consider whether disclosure would expose a third party "unfairly to financial or other harm". This is clearly not limited to financial harm. In this case, the Ministry argued, the situation must be viewed in the context of the applicant's long-standing grievances against, and conflict with, his daughter. The Ministry argued that disclosure of the disputed information would unfairly expose the daughter, and perhaps others, to harassment by the applicant. The Ministry also said disclosure of the information could lead to renewed attempts by the applicant to have his daughter's children removed from her care by the Ministry. The Ministry argued the applicant would try to use any disclosed information "to further his campaign against" his own daughter.

On this point, the Ministry submitted a copy of an affidavit sworn by the daughter in proceedings involving the applicant. (According to the Ministry, these proceedings led to creation of a number of the records in dispute here.) In that affidavit, the daughter deposed to the poor relationship with her father and made a number of allegations about her treatment at home. She also swore that she feared for her life, and that of anyone associated with her, at the hands of her father.

As part of its case, the Ministry submitted notes taken by a Ministry employee who interviewed the applicant, in 1996, in connection with his allegations against his daughter. The applicant is recorded, in these notes, as having said a number of things that speak to the extremely poor state of the relationship between the applicant and his daughter.

For his part, the applicant vehemently denied the truth of such allegations. He said the allegations about his relations with, and actions toward, his daughter were completely false or based on the Ministry's misleading, selective use of court documents and other records. The applicant characterized the Ministry's case as being made up of "deceits, slanderous remarks and accusations, inaccurate files, and conclusions without foundation" (emphasis in original). The applicant submitted approximately one hundred pages of documents he said supported this position.

I have carefully reviewed all of the material before me, including the applicant's rebuttal material. Regardless of who is right or wrong here, the Ministry properly took into account the evidence of poisoned relations between father and daughter in considering whether disclosure of the information would unreasonably invade the privacy of the daughter or others. The applicant seems to believe that if he is able to prove the falsity of the various allegations, or of facts found in the Ministry's files, he should be given access to the records in dispute. But even the records submitted by the applicant suggest that his relationship with his daughter is, at best, extremely troubled and hostile. Whatever the truth of the various accusations and counter-accusations, the fact remains the atmosphere is tense and charged with conflict and animosity.

Section 22(2)(c) says that a relevant circumstance to be considered is whether the personal information "is relevant to a fair determination of the applicant's rights". The applicant's request for review said he needed the disputed records for court purposes". The applicant's request said he needed the complete files "for the court procedures". The applicant has not backed-up his contention on this point with any detail. He simply says he wishes to have this information for vaguely described court purposes. The applicant has not proved that he has any "rights" that are to be determined and for which he needs this information. I cannot conclude from this that the applicant has proven that this circumstance is relevant. In any case, even if the applicant had proven that the circumstance in s. 22(2)(c) is relevant, it would not necessarily be open to the Ministry to disclose the personal information.

I conclude the Ministry was required, both under the Act and under the CFCSA, to refuse to disclose the withheld information to the applicant. The applicant has failed to establish that disclosure of this information would not be an unreasonable invasion of the personal privacy of a third party. In reaching this conclusion, I have been especially influenced by the evidence – including in the documents supplied by the applicant - of bitter and tangled relations between father and daughter. Again, the truth of the various accusations each has hurled at the other does not much matter. The fact remains that disclosure of these records would allow the applicant to delve deep into his daughter's life in a manner that is unacceptable.

4.0 CONCLUSION

For the reasons given above, having found that the Ministry is required by s. 22(1) of the Act, and by s. 77(1)(a) of the CFCSA, to refuse to disclose the information in dispute to the applicant, under s. 58(2)(c) of the Act I order the Ministry to refuse to disclose that information to the applicant.

Because of the above finding and order, I need not deal with the Ministry's reliance on s. 77(1)(b) of the CFCSA.

January 28, 2000

David Loukidelis
Information and Privacy Commissioner
for British Columbia