



OFFICE OF THE  
INFORMATION & PRIVACY  
COMMISSIONER  
— for —  
British Columbia

Order 03-01

**MINISTRY OF CHILDREN AND FAMILY DEVELOPMENT**

Mark Grady, Adjudicator  
January 15, 2003

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**Summary:** Applicants requested information about themselves in records related to their daughter who was placed in foster care. Director has duty under *Child, Family and Community Service Act* in responding to an access request to exercise such diligence that it is not reasonable to believe records were omitted in the Director's response to the request. The Director exercised such diligence in this case.

**Key Words:** *Child, Family and Community Service Act* – omission – diligence.

**Statutes Considered:** *Child, Family and Community Service Act*, s. 89(1).

**Authorities Considered: B.C.:** Order 00-43, [2000] B.C.I.P.C.D. No. 47.

## 1.0 INTRODUCTION

[1] This order concerns an inquiry into the question of whether certain records were omitted in a response by the Director ("Director") appointed and acting under the *Child, Family and Community Service Act* ("CFCSA") to an information request.

[2] In Order 00-43, [2000] B.C.I.P.C.D. No. 47, the Information and Privacy Commissioner determined that he had the jurisdiction to deal with the issue of whether, under the CFCSA, the Director had searched adequately for records. At para. 1 of Order 00-43, the Commissioner wrote:

This order completes an inquiry that began with my decision, dated May 15, 2000, that I have the jurisdiction under the *Freedom of Information and Protection of Privacy Act* ("Act") and the *Child, Family and Community Service Act* ("CFCSA")

to conduct an inquiry into the question of whether the Director (“Director”) under the CFCSA has exercised such diligence that it is not reasonable to believe records were omitted in the Director’s response to an information request. The issue arose because alone among all other ministries – and the over 2,000 other public bodies in British Columbia that are subject to the Act – the Ministry has its own access and privacy provisions under the CFCSA, which was enacted in 1995.

[3] In a request dated July 10, 2001, the applicants in this case made an access to information request for all information held by the Ministry of Children and Family Development (“Ministry”) pertaining to themselves, their daughter and their sons, and primarily related to the Ministry’s action in placing the applicants’ daughter under the care of contractors who provide such services to the Ministry. On January 31, 2002 and March 1, 2002, the Ministry responded to the applicants’ request and disclosed a number of records. Relying on particular exceptions to disclosure in the *Freedom of Information and Protection of Privacy Act* (“Act”) and the CFCSA, the Ministry withheld some or all information in some of these records. It appears that most of the information the Ministry withheld was information about the applicants’ daughter or the applicants, on the basis that disclosure of this information would be an unreasonable invasion of the daughter’s privacy.

[4] On March 4, 2002, the applicants wrote to the Ministry and identified a number of records that they believed were missing from the Ministry’s responses. The applicants submitted a request for review to this Office on March 20, 2002, “... because the records we have received are incomplete.” The applicants identified records that they believed were “missing” and cited the possible sources or location for these records.

[5] During mediation by this Office, the Ministry wrote to the applicants to confirm it had determined that certain individuals, named by the applicants in their March 4, 2002 letter, did not hold any records responsive to the applicants’ request. Because the matter did not settle in mediation, a written inquiry was held under Part 5 of the Act. I have dealt with this inquiry, by making all findings of fact and law and, if necessary an Order under s. 58, as the delegate of the Information and Privacy Commissioner under s. 49(1) of the Act.

## **2.0 ISSUE**

[6] The only issue to be addressed in this inquiry is whether the Ministry, for the Director, exercised such diligence that it is not reasonable to believe that records were omitted from the Ministry’s responses dated January 31 and March 1, 2002.

[7] In their initial submission, the applicants confirm that the only records the Director allegedly omitted were those containing their personal information, created by or held by two different contractors who provided services to their daughter under contract to the Ministry. Therefore, the question to be answered in this inquiry is whether the Ministry has made a reasonable effort to locate and retrieve records containing the applicants’ personal information in records in the custody of the two contractors but under the Ministry’s control. The Ministry accepts this framing of the issue.

[8] In Order 00-43, the Commissioner held that the Ministry, as creator or custodian of the records, is the party best placed to establish whether it exercised such diligence that it is not reasonable to believe that records were omitted from the response. Consistent with this finding, the Ministry has the burden of proof in this case.

### 3.0 DISCUSSION

[9] **3.1 Procedural Objections** – The applicants have made two procedural objections. First, they object to the inclusion of a new affidavit in the Ministry’s reply submission because the affidavit contains new evidence, new argument and new facts. The applicants say that the Ministry’s submission of this second affidavit is contrary to the inquiry procedures established by this Office, which allow a party, in a reply submission, to comment on other parties’ initial submission but do not allow a party to raise new facts, issues or allegations or include new argument or evidence. The Ministry did not respond to the applicants’ objection. I have carefully reviewed the Ministry’s reply submission and further affidavit. I consider the affidavit primarily addresses the applicants’ initial submission in a proper way. This affidavit is properly submitted and I have considered it in making my decision.

[10] The applicants also object to the inclusion of information in the Portfolio Officer’s Fact Report that describes the Ministry’s actions taken during the mediation process. This Office’s procedures do not allow a party to include mediation material in its submissions. In its reply submission, the Ministry says it has no objection to anything in the fact report. I have reviewed the fact report and, in my view, it does not contain information about the substance of mediation. Rather, it contains information about the outcome of mediation, such as issues resolved or other records disclosed during the mediation period. I find that the information in the Portfolio Officer’s Fact Report is appropriately considered in this inquiry and I have done so.

[11] **3.2 Did the Ministry Meet its Obligations?** – The applicants say the records at issue in this inquiry pertain to a 14-month period in the late 1990s when their daughter was either in the care of, or in the custody of, the Ministry. According to the applicants, their daughter initially resided with a contractor I will call “Contractor A” and subsequently resided with a contractor I will call “Contractor B”.

[12] The applicants identified a number of Ministry policies and guidelines that they believe establish a requirement for Ministry staff or its contractors to create records regarding particular events or incidents involving the applicants and their daughter. The applicants confirm that, through other processes, they have received a number of “Critical Incident Reports” about their daughter. They believe it is unreasonable to accept that the Ministry or the contractors do not have “source” or other documents related to these reports. As well, the applicants listed a number of events, incidents or meetings which they consider significant and for which there are no responsive records.

[13] The Ministry submits that its efforts in searching for any contractor records containing information about the applicants have been thorough, repeated and exhaustive and that it has omitted nothing that could reasonably be expected of the Ministry from its search efforts for such records. Affidavit evidence of the Ministry's Information and Privacy Officer who was responsible for processing the applicants' request during most of the time that the Ministry was dealing with the request establishes the following facts about this case:

1. The Ministry sent a separate written request to each of the contractors specifically requesting that the contractors send to the Ministry, among other records, all records concerning the applicants and their daughter. The Ministry's requests identified a number of types of records that would or could contain such information.
2. Contractor A responded on at least three occasions, when contacted by the Ministry, that it had no records responsive to the request. Contractor A explained that, when the applicants' daughter moved to a group home operated by Contractor B, all records concerning the daughter were transferred to Contractor B.
3. Contractor B initially responded by sending some records to the Ministry and confirming that it had no other records concerning the applicants or their daughter.
4. In response to subsequent inquiries from the applicants and upon receiving notice of the applicants' request for review, the Ministry again contacted both contractors to determine if they held any other responsive records. Contractor A again confirmed that it held no responsive records. Contractor B searched for and identified more records that it believed to be responsive to the request. The Ministry subsequently determined that these additional records contained no information about the applicants.
5. In response to the applicants' assertion that the Ministry had failed to disclose critical incident reports, a resource evaluation report and responsive records in Contractor B's daily logbook, the Ministry's Information and Privacy Officer confirmed that the reports did exist, but the Ministry was refusing to disclose any information about the applicants in these reports. She also confirmed that there was no information about the applicants in the logbook. The Ministry's responses to the applicants' request confirm information was withheld under particular exceptions to disclosure in the Act and CFCSA, but does not describe the types of information and records withheld. I recommend to the Ministry (and other public bodies) that they inform applicants of the nature of the withheld information so they do not think it is missing.
6. Regarding the applicants' concern about the lack of "source documents", the Information and Privacy Officer confirmed her understanding from conversations with Contractor B that the gathering of background information about foster

children is kept to a minimum and often is only exchanged verbally. As well, she understands that contractors create a record of necessary information only for significant events.

[14] Having carefully considered the evidence in this inquiry, I find no omission occurred here in the Ministry's search for records. I conclude that the Ministry has made a reasonable effort to locate and retrieve responsive records for the applicants. I also believe that the Ministry has provided a reasonable explanation for why certain records have been withheld from the applicants or why other records do not or may not exist.

#### **4.0 CONCLUSION**

[15] Given the Ministry's evidence of the type and range of its search efforts, I find that the Director exercised such diligence that it is not reasonable to believe that records were omitted from the response. Therefore, no order is necessary.

January 15, 2003

#### **ORIGINAL SIGNED BY**

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Mark Grady  
Adjudicator