OFFICE OF THE
INFORMATION & PRIVACY
COMMISSIONER
for
British Columbia

Order 04-22

MINISTRY OF CHILDREN AND FAMILY DEVELOPMENT

Celia Francis, Adjudicator
September 1, 2004

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Summary: Applicant requested records related to himself, his children and his ex-wife. Ministry withheld some information and said applicant had no right of access to records related to his children and ex-wife. Ministry correctly applied s. 77 CFCSA, with some minor exceptions and found to have exercised due diligence in searching for responsive records.

Key Words: personal privacy – unreasonable invasion – workplace investigation – opinions or views – submitted in confidence – employment history – public scrutiny – fair determination of rights – unfair exposure to harm – inaccurate or unreliable personal information – unfair damage to reputation.

Statutes Considered: *Child, Family and Community Service Act*, ss. 77, 89; *Freedom of Information and Protection of Privacy Act*, s. 22(2)(a), (c), (e), (f), (h) and 22(3)(a), (b).

Authorities Considered: **B.C.:** Order 00-43, [2000] B.C.I.P.C.D. No. 47; Order 00-03, [2000] B.C.I.P.C.D. No. 3; Order 01-07, [2001] B.C.I.P.C.D. No. 7.

1.0 INTRODUCTION

[1] The applicant requested a variety of records regarding himself and his two youngest children from the Ministry of Children and Family Development ("Ministry"). His request said that he needed reports and comments made by social workers, doctors, teachers, the RCMP, foster parents and ministry workers, up to the point where a named business "was suspended by court order".

[2] The Ministry first responded by disclosing some records and withholding information under s. 77 of the *Child, Family and Community Service Act* ("CFCSA") and under s. 22 of the *Freedom of Information and Protection of Privacy Act* ("Act"). The applicant requested a review of the Ministry's decision and later also expressed dissatisfaction with the Ministry's search for records. During mediation, the Ministry found and disclosed further records on two occasions, again applying s. 77 of the CFCSA to some information, but this did not resolve the applicant's issues.

[3] Because the matter did not settle fully 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 the necessary order under s. 58, as the delegate of the Information and Privacy Commissioner under s. 49(1) of the Act.

2.0 ISSUE

[4] The Notice of Inquiry for this case framed the issues before me as whether:

1. The public body has met its duty to assist under s. 6 of the Act by conducting an adequate search for records.

2. The public body has omitted any records created under the CFCSA.

3. The public body is required to refuse access under s. 22 of the Act.

4. The public body is required to refuse access under s. 77 of the CFCSA.

[5] In its initial submission, the Ministry said it had applied ss. 15 and 22 of the Act to a small amount of information which was not, in its view, within the scope of the applicant's request. This is because the records in question came into existence before January 29, 1996, the date on which the CFCSA came into effect. (I note that the Notice for this inquiry listed s. 22 of the Act as an issue, but not s. 15.)

[6] The applicant requested access to records related to his and his two youngest children's involvement with the Ministry. With respect to the Ministry's decision to deny access, it is clear from the material before me that the applicant is concerned only about records created under the CFCSA. I agree with the Ministry that the records to which it applied ss. 15 and 22 of the Act (pp. 429, 431-432, 434, 435, dated 1990 and 1994) are outside the scope of the applicant's request. I have therefore not considered them in this decision.

[7] The Notice for this inquiry also stated that one of the issues was whether the public body had met its duty under s. 6(1) of the *Freedom of Information and Protection of Privacy Act* ("Act") by conducting an adequate search for records. Again, I have not considered this issue, as it is clear from the material before me that the applicant's concerns regarding the Ministry's records search relate to records created under the CFCSA, not the Act.

[8] Under s. 57(2) of the Act, the applicant has the burden of proof regarding third-party personal information.

3.0 DISCUSSION

[9] **3.1 Ministry's Search for Records** – The material before me indicates that the applicant raised, on a number of occasions, concerns respecting records he believes should exist but which the Ministry did not disclose. Indeed, this appears to be the applicant's primary concern in this case.

[10] The CFCSA does not contain an equivalent provision to s. 6(1) of the Act, which imposes a duty on public bodies to make every reasonable effort to assist applicants and to respond without delay to each applicant openly, accurately and completely.

[11] However, the Information and Privacy Commissioner noted in Order 00-43, [2000] B.C.I.P.C.D. No. 47, that he had found in a decision of 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.

[12] The Ministry said that it dealt with the search issue in light of the Commissioner's orders on records searches and s. 6(1) of the *Freedom of Information and Protection of Privacy Act* ("Act"), as they take an approach similar to that in Order 00-43, (para. 4.14, initial submission). In assessing the Ministry's submissions on its searches for records, I have applied here, without repeating them, the principles set out in Order 00-43.

[13] The Ministry first outlined its standard practices for retrieving responsive records. It then described its records searches in response to the applicant's request, with support from comprehensive affidavit evidence by the information and privacy officer responsible for processing the applicant's request (paras. 4.19 to 4.25, initial submission; paras. 4-57, Brickwood affidavit). I summarize below the Ministry's submissions on these points.

[14] The Ministry has a records management system which is designed to allow Ministry staff to identify and locate all files related to a person's previous contact with the Ministry. This system holds current and historical information about services the Ministry has provided to families and children. Upon receiving a request for records under the CFCSA, staff in the Ministry's information and privacy office search the system's central registry to determine if there are any registered files potentially relevant to the request. They then retrieve and review the files they identify in this process.

[15] The Ministry said it followed these steps here. Staff also verified with the applicant that he does not have "legal care" of his children and then told him he would only receive records that contain information about himself. The Ministry said that the applicant did not challenge the Ministry on this issue. Based on their understanding of the request and knowledge of the records management system, information and privacy staff initially determined that they needed to retrieve and review certain files, including a variety of notes maintained by local office staff.

[16] In response to the applicant's subsequent concerns about the absence of various records, Ministry staff expanded their searches to other files and other related notes and records in the hands of local office staff. As a result of these searches and further discussions with the applicant, the Ministry said it identified and disclosed more responsive records.

[17] The applicant's initial submission, at paras. 1-14, cited a number examples, such as notes of meetings, telephone conversations and other interactions between the applicant and Ministry staff, records reflecting certain actions by Ministry staff and records about his children, that were not among the records he received. The applicant did not respond to the Ministry's initial submission on its records searches.

[18] In its reply, the Ministry responded in detail to the applicant's concerns and said it had made reasonable efforts to search for records (paras. 1-19, reply; Murray and Moore affidavits). I summarize this response below.

[19] One of the Ministry's main points was that the applicant "appears to overestimate the extent to which Ministry employees recorded their conversations with him" (para. 2, reply). In some cases, for example, records of conversations or meetings with the applicant do not exist because Ministry staff did not create records of interactions where they did not relate to child protection matters or where the applicant repeated information he had already provided. In other cases, Ministry staff had entered information from their notes into the running record on the applicant's file and had then destroyed the notes.

[20] The Ministry's other main argument was that certain records that the applicant said were missing do not contain information about the applicant but relate solely to third parties or other matters (paras. 1, 5, 11, reply). The Ministry said the applicant does not have a right of access to those types of records as, under s. 76 of the CFCSA, he has a right of access only to records containing information about himself. As he does not have legal care of his children, it continued, he has no right of access to records containing their information. The Ministry said that the applicant should not assume that the Ministry's search was deficient because he had not received copies of such records. I discuss this further below.

[21] The Ministry also pointed out that, in a number of cases where the applicant said he did not receive records reflecting certain interactions with Ministry staff, he had in fact received those types of records. It referred to specific pages in these cases (see, for example, paras. 8, 12-13, reply).

[22] I have carefully reviewed the Ministry's detailed descriptions of its searches for records and its responses to the applicant's complaint that it did not provide access to certain types of records. I conclude that Ministry staff made reasonable efforts to locate and retrieve responsive records for the applicant. I also conclude that the Ministry has provided reasonable explanations as to why some types of records do not exist and why the applicant did not receive certain types of records. I am satisfied that the Director exercised such diligence that it is not reasonable to believe that records were omitted from the response.

[23] **3.2 Right of Access Under the CFCSA** – I should first note that I am dealing here with approximately 665 pages of records, from which the Ministry severed relatively little third-party personal information. The Ministry did not withhold any pages in their entirety.

[24] The applicant expressed concern that he did not receive specific records related to certain allegations or situations involving his children, ex-wife and others. He believes that the Ministry withheld these records improperly under the CFCSA. In the context of its records searches, the Ministry pointed out at para. 1 of its reply that s. 76 of the CFCSA gives a person a right of access to records containing information about him or herself. As such, it argued, the applicant does not have a right of access to records containing information only about other individuals. If the applicant was not mentioned in records in the files it searched, the Ministry said that it did not retrieve any such records (see also paras. 4, 5, 11, reply).

[25] The relevant parts of s. 76 of the CFCSA reads as follows:

> ***Right of access and right to consent to disclosure***
>
> 76(1) A person has the right
>
> (a) to be given access to a record containing information about the person, and …
>
> (2) A person has the right
>
> (a) to be given access to a record containing information about a child who is under 12 years of age and is in the person's legal care, and …
>
> (3) The right to be given access to a record and to consent to the disclosure of information in the record does not extend to information excepted from disclosure under section 77.
>
> (4) If information excepted under section 77 can reasonably be severed from a record, a person referred to in subsection (1) or (2) has the right of access to and the right to consent to the disclosure of information in the remainder of the record.

[26] I agree with the Ministry that, under s. 76(1)(a) of the CFCSA, the applicant in this case is entitled to have access to records which contain information about himself, with the exception of information in those records that may or must be withheld under s. 77 of the CFCSA. The material before me indicates that he does not have custody or "legal care" of

his two younger children. As such, he does not have a right of access under s. 76(2)(a) of the CFCSA to records containing only their personal information. He also does not, under s. 76 of the CFCSA, have a right of access to records that contain only information about his ex-wife. I therefore agree with the Ministry's position that the applicant does not have a right to request access to records which contain only third-party personal information and that it was not necessary for the Ministry to retrieve and consider these records when processing his request.

[27] **3.3 Personal Privacy** – The applicant has the burden of proof regarding third-party personal information in this inquiry. However, his representative addressed this issue only briefly at p. 3 of his initial submission. I cite below his entire submission on this issue:

> **B) The applicant is not in a position to determine which documents have been retained by reason of privacy of third parties as he has not obtained an itemization of what those documents are.**
>
> It is submitted on his behalf that any documents withheld by virtue of their reference to the children or [their mother] are in issue in the Family Relations Act litigation and moreover given that it is the mother who is contesting the father's right to have access to his children she has in so doing waived any privilege.
>
> The Applicant had several sit down meetings with the Ministry in the matter of the behavior of [employees of a named business] cursing and shouting at the children and at the Applicant. No record has been disclosed. It is submitted that the conduct of businesses and third parties paid by The Ministry to attend to children in the Ministry's care are subject to public scrutiny when the welfare of the children is at issue. [**bolding in original**]

[28] The applicant did not reply to the Ministry's representations on this issue.

[29] As the Information and Privacy Commissioner discussed at pp. 3-4 of Order 00-03, [2000] B.C.I.P.C.D. No. 3, the application of s. 77 of the CFCSA incorporates an analysis under ss. 22(2)-(4) of the Act of whether or not disclosure of the information in question would result in an unreasonable invasion of third-party personal privacy. Without repeating that discussion, I have applied here the same approach and principles.

[30] The Ministry's initial submission, at para. 4.01, indicated that it is relying on ss. 77(1)(a) and (b) and 77(2)(c) of the CFCSA to withhold the information in issue here. It stated that it is no longer relying on s. 77(2)(b) of the CFCSA in this case.

[31] The relevant parts of s. 77 of the CFCSA read as follows:

> ***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

(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.

(2) A director may refuse to disclose information to a person who has a right of access under section 76 if

…

(c) the information was supplied in confidence, during an investigation under section 16, by a person who was not acting on behalf of or under the direction of a director, 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

[32] The Ministry argued that, for the purposes of applying s. 77(1)(a) of the CFCSA, ss. 22(3)(a) and (b) and 22(2)(e), (f) and (h) apply (paras. 4.28 and 4.32, initial submission). It combined its submissions on s. 77(1)(a) of the CFCSA with those on s. 22 of the Act. The Ministry included in its initial submission a table listing the records in dispute in this case, by page number and the exceptions it believes applies. It also briefly described, in some cases on an *in camera* basis, the nature of the withheld information, linked to specific provisions of s. 77 of the CFCSA.

[33] The applicant did not mention specific parts of s. 77 of the CFCSA or of s. 22 of the Act. However, his submission on the personal information aspects of this case alluded to issues which I take to refer to the factors in ss. 22(2)(a) and (c).

[34] The relevant parts of s. 22 of the Act read as follows:

Disclosure harmful to 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.
>
> (3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if
>
> (a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation,
>
> (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, … .

[35] **3.4 Presumed Unreasonable Invasion of Personal Privacy** – I will now discuss the application of s. 22 of the Act to the records in dispute.

Medical information

[36] The Ministry said that some of the withheld information in the records relates to "a medical condition, diagnosis, condition and/or evaluation" that clearly falls under s. 22(3)(a) of the Act (para. 4.35, initial submission). Upon reviewing the severed information in the records, I agree that there is some third-party medical information which falls under s. 22(3)(a). Its disclosure is therefore presumed to be an unreasonable invasion of third-party privacy.

Compiled as part of investigation

[37] The Ministry stated, at para. 4.34, initial submission, with respect to s. 22(3)(b):

> Child abuse or neglect is a violation of law. The information at issue was gathered for child protection purposes.

[38] The Ministry also referred to Order 00-03, in which the Information and Privacy Commissioner agreed that s. 22(3)(b) applies to information related to child protection investigations. As in Order 00-03, the withheld information in this case relates to allegations regarding child protection matters that could result in the imposition of penalties or sanctions. With a handful of minor exceptions, which I discuss below, I agree with the Ministry that s. 22(3)(b) applies to it, with the concomitant presumption.

[39] The Ministry withheld, possibly through an oversight, a few items of the applicant's personal information on pp. 547, 580, 585 and 596 which relate to conversations between the applicant and Ministry service providers. They are similar to information that the Ministry released elsewhere. Section 22(3)(b) does not apply to this information, in my view, and the applicant is entitled to receive it. I have prepared re-severed copies of the relevant pages for the Ministry to disclose to the applicant.

[40] The Ministry also withheld the name of an RCMP officer on p. 461. I do not consider that s. 22(3)(b) of the Act applies to this information which, in this context, is not sensitive anyway. The applicant is entitled to this information.

[41] **3.5 Relevant Circumstances** – The parties made a number of arguments directed at the relevant circumstances in s. 22(2) of the Act.

Public scrutiny

[42] The applicant appears to believe that his children's welfare is at stake and that disclosure of the withheld information is necessary to subject to public scrutiny the Ministry's actions with respect to a third-party business's care of his children. Beyond stating that the employees of the business cursed and shouted at him and his children, however, he did not explain how disclosure of the withheld information would result in such scrutiny.

[43] From my review of the records, I can see that the applicant has ongoing concerns for his children's welfare. I do not, however, consider that the relatively small amounts of withheld third-party personal information would add anything to public scrutiny of the Ministry's activities with regard to child protection matters involving his children. I find that s. 22(2)(a) is not relevant here.

Fair determination of rights

[44] The applicant also appears to believe that disclosure of the records is relevant to a fair determination of his rights in litigation between himself and his ex-wife regarding child custody issues. Again, he did not explain how this factor applies here.

[45] The Information and Privacy Commissioner has said that rights in this context are "legal rights" (see, for example, Order 01-07, [2001] B.C.I.P.C.D. No. 7). While it appears from the material before me that litigation between the applicant and his ex-wife on child custody matters is ongoing, the applicant has not shown how the withheld personal information is relevant to any legal rights he may have in that context. A vague claim that the withheld information is in issue in *Family Relations Act* litigation does not suffice to establish that s. 22(2)(c) applies. Nor do I agree with the applicant's suggestion that, because his ex-wife is resisting his attempts to gain custody of their children, she has somehow forfeited all her rights to privacy. I find that s. 22(2)(c) is not relevant here.

Confidential supply

[46] Regarding the issue of confidential supply of personal information, the Ministry said in its initial submissions that

> 4.37 … it is reasonable to conclude that the information provided by third parties to the Ministry was supplied in confidence.
>
> 4.38 Child protection investigations are very serious and sensitive matters. Being the subject of a child protection investigation can be very traumatic and stigmatizing.

> 4.39 In terms of sensitivity, child protection information is one of the most sensitive types of information one can imagine. Anyone providing child protection information to the Ministry would therefore reasonably presume that any information they supplied would be treated in a confidential manner. The Ministry submits that section 22(2)(f) weighs against disclosure of the information at issue in this inquiry.

[47] The Ministry did not provide any evidence to support its position on s. 22(2)(f), for example, written policies or affidavits from knowledgeable ministry employees on its practices for collecting information in confidence from Ministry clients and others during child protection investigations.

[48] The Ministry did, however, provide affidavit evidence on the issue of confidential supply of information in support of its position on s. 77(2)(c) of the CFCSA. I also found it relevant to whether s. 22(2)(f) of the Act applies to information withheld under s. 77(1)(a) and have considered it here as well. I quote below the salient portions of the affidavit sworn by Don Brickwood, the information and privacy analyst responsible for the applicant's request:

> 64. The information I withheld under section 77(2)(c) of the *CFCSA* in this case consists largely of information supplied during what social workers call "collateral checks". Those are communications between (1) a director, a Ministry employee or a Ministry service provider providing child protection services on behalf of the Ministry and (2) a third party not acting on behalf of, or under the direction of, a director.
>
> 65. I have been advised by Ministry social workers on a number of occasions, and I believe it to be true, that their practice in conducting child protection investigations is to obtain collateral checks from third parties who have had contact with the parents or children. The purpose of those collateral checks is to assess whether there are any child protection concerns during the course of a child protection investigation.
>
> 66. I have been further advised by Ministry social workers on a number of occasions, and I believe it to be true, that when a social worker conducts 'collateral checks' their practice is to advise the third party in question that any information provided will be treated in a confidential manner and that third parties are generally happy to hear of such an assurance. If it were not for such an assurance, it is likely that many third parties would refuse or be reluctant to provide the Ministry with child protection information, for fear that there might be some adverse consequences for them personally, i.e. harassment or physical retaliation by a parent.
>
> 67. Given the above, I believe it is reasonable to assume that any person providing information to the Ministry during a collateral check understands that the Ministry is collecting such information on a confidential basis.
>
> 68. For the above reasons, I believe that the information I withheld under section 77(2)(c) of the *CFCSA* (in addition to section 15 of *FOIPPA*) in this case was supplied to the Ministry in confidence.

[49] While the Brickwood evidence is helpful, I would have preferred affidavit evidence on the issue of confidential supply of personal information from social workers involved in the applicant's case. I note that the Ministry supplied affidavits on the search issue from Ministry social workers involved in the applicant's case. I see no reason why the Ministry could not also have supplied affidavit evidence from appropriate employees on the confidentiality issue.

[50] Nevertheless, I am satisfied from my review of the records and other material before me, that third parties supplied personal information in confidence to the Ministry in this case and that s. 22(2)(f) applies to it, favouring its withholding. I include here a few items of the applicant's personal information which remain withheld. They are intertwined in such a way with third-party personal information supplied in confidence that they cannot be disclosed without unreasonably invading third-party privacy (see para. 48, Order 01-07).

Unfair exposure to harm and damage to reputation

[51] The Ministry also asserted that ss. 22(2)(e) and (h) apply (paras. 4.40-4.41, initial submission). With respect to the latter provision, it said:

> 4.41 … For example, it is reasonable to assume that the Applicant may try to use information concerning his children or ex-wife to his advantage in his continuing custody battles with her.

[52] The Ministry did not explain how the applicant might use the withheld information "to his advantage" (whatever that means) in the custody matters involving his children and ex-wife. Nor did the Ministry explain how such a use would lead to unfair harm or damage of the types contemplated by ss. 22(2)(e) and (h). Such a potential use is purely speculative.

[53] The records in issue indicate that the applicant has been engaged in a long-running and often acrimonious custody dispute with his ex-wife over their children and that each has made allegations against the other to the Ministry. They also demonstrate that the applicant already possesses considerable knowledge of his ex-wife's behaviour involving their children. Indeed, it is clear from the records that the ex-wife's behaviour has formed the basis of the applicant's allegations against her to the Ministry. If the applicant wishes to make further similar allegations against his ex-wife or use his knowledge of her behaviour and actions in their child custody dispute, he does not need the withheld information to do so. In any case, I do not consider this hypothetical use would lead to the harms described in ss. 22(2)(e) and (h). I find these sections do not apply here.

Amount of information already disclosed

[54] Finally, the Ministry suggested that

> 4.42 … the fact that the Applicant has already received a considerable amount of information weighs against disclosure of the withheld information. The Ministry's decision to disclose the information it disclosed was made in

> good faith in an honest attempt to protect the privacy of third parties as required by the *FOIPPA* and the *CFCSA*.

[55] The Ministry did not say what it meant by "a considerable amount of information".

[56] The applicant has received approximately 665 pages of records, with only relatively small amounts withheld under the CFCSA. I commend the Ministry for its openness in this respect. However, I fail to see how it is relevant that the applicant has already received "a considerable amount of information" nor why this should count against him in deciding whether or not he should receive more information. Surely no one would argue that the fact that an applicant has received very little information favours disclosure of more. Rather, the question in such cases is whether or not an applicant is entitled to more information. The amount of information already disclosed, large or small, has nothing to do with this determination.

[57] I note that the Information and Privacy Commissioner rejected a similar argument at paras. 41-44 of Order 01-07.

Applicant's awareness of third-party personal information

[58] The Information and Privacy Commissioner has found, as have I, that an applicant's prior knowledge or awareness of third-party personal information is a relevant factor that public bodies should consider when applying s. 22 of the Act. In a given case, this factor may well favour disclosure of third-party personal information. Although the parties did not discuss this factor in their submissions, I consider that it is relevant here. As I discuss below, this factor favours disclosure of some personal information to the applicant, in this case, rebutting the presumed invasion of third-party privacy.

[59] The Ministry severed two duplicate pages (pp. 282 and 622) slightly differently, in each case withholding information on one page that it released on the other. Disclosure of complete copies of these two pages to the applicant would therefore not result in an unreasonable invasion of third-party privacy.

[60] The Ministry also severed some personal information on pp. 160-161 that relates to the ex-wife. These pages form part of reasons for judgement in a *Family Relations Act* matter to which the applicant and the ex-wife were parties. As a party to the case, the applicant would have received a copy of this decision unless the judge ruled otherwise. There is no indication of such a ruling in these reasons for judgement. The applicant's prior knowledge of the ex-wife's personal information on pp. 160-161 means that its disclosure to the applicant would not, in this case, unreasonably invade the ex-wife's privacy.

[61] **3.6 Identity of Person Making Report** – The Ministry pointed out that s. 77(1)(b) is a mandatory exception and said that it is clear from the face of the records in question that the exception applies (paras. 4.44-4.46, initial submission; para. 62, Brickwood affidavit). From my review of the records and other material before me, I agree with the Ministry that s. 77(1)(b) applies to the information in question.

[62] **3.7 Supplied in Confidence During Investigation** – The Ministry said it applied s. 77(2)(c) to information that, in its view, was clearly supplied in confidence during an investigation under s. 16 of the CFCSA by someone not acting on behalf of or under the direction of a director. The Ministry said that it applied s. 77(2)(c) to the same information to which it applied s. 77(1)(a), (paras. 4.47-4.49, initial submission; paras. 63-70, Brickwood affidavit). Again, affidavit evidence from the Ministry social workers directly involved in the applicant's case would have been preferable.

[63] I said above that I accepted that, for the purposes of s. 22(2)(f) of the Act, personal information was supplied in confidence to the Ministry in this case. Based on the same affidavit evidence and my review of the other material before me, I find that s. 77(2)(c) applies to the information to which the Ministry applied it.

4.0 CONCLUSION

[64] For reasons given above, I make the following orders under s. 58 of the Act:

1. Subject to para. 2 below, I require the Ministry to refuse access to the information it withheld under s. 77 of the CFCSA.

2. I require the Ministry to give the applicant access to information that it withheld under s. 77 of the CFCSA on pp. 160-161, 282 and 622; to the RCMP officer's name on p. 461; and to the applicant's personal information on pp. 547, 580, 585 and 596, as shown on the re-severed copies of those four pages provided to the Ministry with its copy of this order.

[65] I am satisfied that the Director exercised such diligence that it is not reasonable to believe that records were omitted from the response. Consequently, no order respecting this issue is necessary.

September 1, 2004

ORIGINAL SIGNED BY

Celia Francis
Adjudicator