

**Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 223-1998
April 17, 1998**

INQUIRY RE: A review of the responses by the Ministry for Children and Families to multiple requests from an applicant for access to and correction of records

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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 November 10, 1997 under section 56 of the *Freedom of Information and Protection of Privacy Act* (the Act). This inquiry arose out of an applicant's request for review of responses by the Ministry for Children and Families (the Ministry) to multiple requests for access to and correction of records.

2. Documentation of the inquiry process

The applicant made approximately thirty-three requests to the Ministry for access to and correction of records between December 3, 1993 and February 9, 1995. All of the requests related to employment issues between the applicant and the Ministry, including access to Ministry policies and procedures for a range of situations connected with the employment issues.

The Ministry made multiple responses between December 24, 1993 and April 11, 1995, in which it provided access to a large portion of the requested records; partially withheld some records under sections 14, 19, and 22 of the Act; directed the applicant to Ministry offices to obtain routinely available records; and advised the applicant that, "[t]he Ministry has no other records in its custody that relate to this request. Given this, if the records that you are seeking were not released to you..., the Ministry has no such records in its custody as no such records exist."

On February 24, 1995 the applicant initiated a review, by my Office, of the Ministry's responses. During the ensuing two years the complexities of the situation were gradually addressed.

On July 6, 1997 both the applicant and the Ministry agreed to extend the deadline for completion of the review to August 7, 1997. On July 16, 1997 both parties were notified of a written inquiry scheduled for August 7, 1997. This inquiry date was further extended to October 14, 1997 and then to November 10, 1997, at the request of the applicant, and in consultation with, the Ministry.

3. Issues under review and the burden of proof

The issues under review at this inquiry are threefold:

- the Ministry's application of section 14 to two records, section 19 to five records, and section 22 to three records.
- whether the Ministry conducted an adequate search for the records the applicant requested in accordance with section 6 of the Act.
- whether the Ministry was required under section 29 of the Act to correct Ministry records in the manner requested by the applicant.

The relevant sections of the Act are as follows:

Duty to assist applicants

- 6(1) head of a public body must make every reasonable effort to assist applicants and to respond without delay to each applicant openly, accurately and completely.

Legal advice

14. The head of a public body may refuse to disclose to an applicant information that is subject to solicitor client privilege

Disclosure harmful to individual or public safety

- 19(1) The head of a public body may refuse to disclose to an applicant information, including personal information about the applicant, if the disclosure could reasonably be expected to
- (a) threaten anyone else's safety or mental or physical health, or
 - (b) interfere with public safety.

- (2) The head of a public body may refuse to disclose to an applicant personal information about the applicant if the disclosure could reasonably be expected to result in immediate and grave harm to the applicant's safety or mental or physical health.

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
- ...
- (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,
-

Right to request correction of personal information

- 29(1) An applicant who believes there is an error or omission in his or her personal information may request the head of the public body that has the information in its custody or under its control to correct the information.
- (2) If no correction is made in response to a request under subsection (1), the head of the public body must annotate the information with the correction that was requested but not made.
- (3) On correcting or annotating personal information under this section, the head of the public body must notify any other public body or any third party to whom that information has been disclosed during the one year period before the correction was requested.
- (4) On being notified under subsection (3) of a correction or annotation of personal information, a public body must make the correction or annotation on any record of that information in its custody or under its control.

Section 57 of the Act establishes the burden of proof on the parties in this inquiry.

Under section 57(1), where access to information in the records has been refused under section 14 or 19, it is up to the public body to prove that the applicant has no right of access to the records or part of the records.

Under section 57(2), if the records or part that the applicant is refused access to under section 22 of the Act, 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.

Section 57 is silent with respect to a request for review about the duty to assist under section 6 of the Act. As I decided in Order No. 110-1996, June 5, 1996, the burden of proof is on the public body.

Section 57 is also silent with respect to a request for review about a request for the correction of personal information under section 29 of the Act. As I decided in Order No. 124-1996, September 12, 1996, the burden of proof is on the public body.

4. Procedural objections

The applicant filed his extensive submissions on an *in camera* basis. The Ministry objects to what appears to be an abuse of a party's right to make *in camera* submissions and requests disclosure of any or all of the applicant's submissions which have been inappropriately made on an *in camera* basis. The Ministry requests that I order disclosure of the applicant's submissions if a reply argument is required. Since I did not find it necessary to request a reply submission from the Ministry, it is not necessary to order disclosure.

5. The records in dispute

The records in dispute relate to employment issues between the applicant and the Ministry and Ministry policies and procedures related to a range of situations associated with the employment issues. The eight specific documents that were only partially disclosed include: four memos and an e-mail note.

6. The applicant's case

Since the applicant made his entire initial and reply submissions on an *in camera* basis, I am unable to present his arguments in a public forum. However, I have carefully reviewed them.

7. The Ministry for Children and Families' case

The Ministry submits that the applicant was a social worker for the Ministry. Its lengthy account of this failed relationship, which occurred in 1991, does not need to be summarized here. Suffice it to say, that the applicant is not a happy former employee and that he has a penchant for letter writing. In response to various requests for records under the Act, the applicant has received approximately 10,000 pages of records. Eight records remain in dispute in this inquiry, from which approximately five pages of information have been severed under the Act. (Submission of the Ministry, paragraphs 1.03 to 1.06)

I have presented below, as required, the Ministry's submissions on the application of specific sections of the Act to the records in dispute.

8. Discussion

Section 14: Solicitor-client privilege

On the basis of an established interpretation of this section, the Ministry has withheld a request for legal advice to a lawyer in the Legal Services Branch and his response thereto. (Submission of the Ministry, paragraphs 5.01 to 5.07) These records are squarely within the scope of solicitor-client privilege under section 14 of the Act.

Section 19: Disclosure harmful to individual or public safety

The Ministry submits that it has withheld information that could reasonably be expected to threaten the safety or mental health of third parties, because the "third parties in this case have very legitimate grounds for fearing a hostile response from the Applicant," given his past behaviour (which the Ministry has more than adequately described for this purpose). The *in camera* affidavits from affected parties further document the threats that they have experienced from the applicant. I find that the Ministry has more than adequate grounds to withhold information from the records in dispute on the basis of this section. (Submission of the Ministry, paragraphs 5.08 to 5.22)

Section 22: Disclosure harmful to personal privacy of third parties

The Ministry relies in particular on section 22(2)(e) for purposes of non-disclosure of the personal information of third parties, that is, that they will be exposed unfairly to financial or other harm. Given the evidence put forward by the Ministry for the purposes of applying section 19, I have no reservations about accepting the same arguments in the context of applying section 22 as well in the circumstances of the present inquiry. (Submission of the Ministry, paragraphs 5.23 to 5.28)

Section 6: Duty to assist the applicant

The Ministry has disclosed more than 10,000 pages of records to the applicant and has spent over 300 hours of staff time in the Information and Privacy Division of the Ministry alone. The affidavit of Judy Forbister documents the efforts of the Ministry to satisfy the demands of this applicant. (Submission of the Ministry, paragraph 5.29)

I conclude that the Ministry has made every reasonable effort to assist the applicant and responded without delay in an open, accurate, and complete manner in accordance with section 6(1) of the Act.

Section 29: Correction of personal information

The applicant seeks corrections under section 29 of the Act in the form of requesting written acknowledgment from the Ministry of numerous falsehoods which he has identified in the records. The Ministry submits that the applicant is seeking to use the Act to correct perceived injustices and that he has not submitted a proper request for correction of personal information under section 29 of the Act (Submission of the Ministry, paragraph 5.30) I agree with the Ministry on this point.

If the applicant wishes to request a correction of his personal information under section 29, the appropriate procedure is to submit a request which clearly identifies the “inaccurate” information and how that information should be corrected. A correction request should also include any documentation or evidence that supports the correction request. It is not enough to simply state that the information is all lies. A public body must be presented with a specific piece of information which the applicant believes is inaccurate before it can make a determination on whether or not that information should be corrected.

In this case, the applicant is not seeking a correction of his personal information. Rather, he is requesting that various Ministry staff write him letters acknowledging the “lies” which he has underlined in the records. Such a request does not fall within the scope of section 29 of the Act. The Ministry is, therefore, not required to do as the applicant asks.

Review of the Records in Dispute

I have reviewed each of the records in dispute, which are also described in detail on page 8 of the Ministry’s submission. My conclusions about each record follow:

1. Record 1 is a memorandum seeking legal advice that has been appropriately withheld on the basis of section 14 of the Act.
2. Record 2 is a memorandum conveying legal advice that has been appropriately withheld on the basis of section 14 of the Act.

3. Record 3 is a field report, which has been entirely disclosed to the applicant except for five severances of names of third parties, which have been appropriately withheld on the basis of sections 19 and 22 of the Act.
4. Record 4 is an e-mail message from which one observation has been appropriately withheld on the basis of section 19 of the Act.
5. Record 5 is a collection of e-mail messages from which portions have been appropriately severed on the basis of sections 19 and 22 of the Act.
6. Record 6 is a further e-mail message from which portions have been appropriately severed on the basis of section 19 of the Act.
7. Record 7 is an e-mail message from which a name has been appropriately severed on the basis of sections 19 and 22 of the Act.
8. Record 8 is a transcript of a meeting from which six names and one descriptive term have been appropriately severed on the basis of section 22 of the Act.

9. Order

Section 58(1) of the Act requires me to dispose of the issues in an inquiry by making an Order under this section. I find that the search conducted by the Ministry for Children and Families in this case was a reasonable effort within the meaning of section 6(1) of the Act.

Under section 58(3)(a), I require the Ministry for Children and Families to perform its duty under section 6(1) to make every reasonable effort to assist the applicant. However, since I have found that the search conducted was reasonable, I find that the Ministry for Children and Families has complied with this Order and discharged its duty under section 6(1) of the Act.

I find that the Ministry for Children and Families was authorized to withhold or sever the records in dispute under sections 14 and 19 of the Act. Under section 58(2)(b) of the Act, I confirm the decision of the Ministry for Children and Families to refuse access to the records in dispute that have been withheld or severed under sections 14 and 19.

I find that the Ministry for Children and Families was required to withhold or sever the records in dispute under section 22(1) of the Act. Under section 58(2)(c), I require the Ministry for Children and Families to refuse access to the records in dispute that have been withheld or severed under section 22(1).

I find that the Ministry for Children and Families was not required to correct personal information under section 29 of the Act. Under section 58(3)(d) of the Act, I

confirm the decision of the Ministry for Children and Families not to correct the personal information.

David H. Flaherty
Commissioner

April 17, 1998